THE

JUSTICE of the PEACE,

AND

PARISH OFFICER.

BY RICHARD BURN, LL. D.

Chancellor of the Dioceſe of CARLISLE, and one of his MAJESTY's Juſtices of the Peace for the Counties of WESTMORLAND and CUMBERLAND.

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Exciſe and Cuſtoms.

AS the cuſtoms and exciſe, ſo far as juſtices of the peace, conſtables and other peace officers, are concerned therein, are in ſome meaſure connected and interwoven with each other; it is thought proper here to repreſent them together, that the reader may at once have a full and diſtinct comprehenſion of the whole.

I. Of the cuſtoms in general.
II. Of the exciſe in general.
III. Of the ſeveral particulars under the management of the commiſſioners of the cuſtoms and exciſe.

I. Of the cuſtoms in general.

Note; There are two general books of rates for aſcertaining the values of goods on importation, according to which the cuſtoms ſhall be paid; the one ſigned by Sir *Harbottle Grimſtone*, baronet, ſpeaker of the houſe of commons, referred to, eſtabliſhed, and confirmed by the act of tonnage and poundage, 12 *C.* 2. *c.* 4. The other, ſigned by *Spencer Compton*, eſquire, ſpeaker of the houſe of commons, being an additional book of rates of goods imported, not particularly ſpecified in the former book of rates: The latter of which, as being part of the act itſelf, is inſerted in the ſtatutes at large, 11 *G. c.* 7. but the former, altho' it is as neceſſary to be known, yet being no part of the act, is not inſerted therein; but may be found in Mr. *Cay*'s abridgment. And to theſe divers additions have been made by ſubſequent acts of parliament.

Appointing and ſwearing commiſſioners.

1. When any commiſſion ſhall be iſſued for conſtituting commiſſioners of the cuſtoms, two of them firſt named in the commiſſion ſhall be ſworn before the chancellor, or chief baron of the exchequer, or maſter of the rolls, *for the true and faithful execution, to the beſt of their knowledge and power, of the truſt committed to their charge and inſpection, and that they will not take or receive any reward or gratuity, directly or indirectly, other than their ſalaries,*

and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done, in the execution of their employment in the customs, on any account whatsoever. 6 W. c. 1. s. 5.

And every other of the commissioners and patent officers, and every of their deputies, clerks, or servants, and all other officers who shall have any employment in or about the customs, shall at their admission, if it is within the ports of *London*, take the said oath before two commissioners; and elsewhere, before two justices of the peace in the county, town, or place, where his employment shall be; and every person not taking such oath, shall forfeit his office. *id.*

And the persons hereby respectively authorized to administer the oath, shall certify the taking thereof, to the next sessions to be held for the county or place where the oath was administred, to be kept amongst the records. *id. s.* 6.

In what cases they only can make seisures.

2. By the 13 & 14 *C.* 2. *c.* 11. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or non-payment of customs, but by officers of the customs. *s.* 15.

But by the 8 *G. c.* 18. Spirituous liquors, *British* or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or by such persons as shall be deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, but by no other person. *s.* 24.

And by the 33 *G.* 2. *c.* 9. Officers of excise as well as those of the customs, may seize all ships, vessels, boats, wherries, pinnaces, barges, or gallies, liable to be forfeited for any of the reasons contained in any of the acts of 8 *G. c.* 18. 11 *G. c.* 30. 12 *G. c.* 28. hereafter following, and proceed to condemn the same as the officers of the customs may do. *s.* 24.

And by the 9 *G.* 3. *c.* 6. The officers of excise may seize horses, or other cattle and carriages made use of in carrying brandy, arrack, rum, spirits, and strong waters (customs and other duties not being first paid or secured), and proceed to condemnation thereof, in the same manner as officers of the customs may do.

Shipping or landing goods without warrant.

3. If any goods shall be laden or taken in from the shore, into any barge, hoy, wherry, or boat, to be carried aboard any ship outward bound; or laden or taken in out of any ship coming in from foreign parts without a warrant and presence of an officer of the customs; such barge, hoy, wherry,

wherry, or boat ſhall be forfeited; and the wharfinger offending ſhall forfeit 100 l, and the maſter, purſer, boatſwain, or other mariner of any ſhip inward bound, conſenting thereunto, ſhall forfeit the value of the goods ſo unſhipped; half to the king, and half to him that ſhall ſue. 13 & 14 *C.* 2. *c.* 11. *ſ.* 7.

And if any carman, porter, waterman, or other perſon, ſhall aſſiſt in the taking up, landing, ſhipping off, or carrying away, any ſuch goods; ſuch perſon being apprehended by the warrant of any juſtice of the peace, and the ſame being proved by the oath of two witneſſes, the ſaid offender for the firſt offence ſhall by the juſtice be committed to the next gaol, there to remain till they find ſurety of the good behaviour for ſo long time until he be diſcharged by the lord treaſurer, chancellor, under treaſurer, or barons of the exchequer; and for the ſecond offence he may by any juſtice of the peace as aforeſaid, be committed to the next gaol, there to remain for two months without bail, or until he ſhall pay to the ſheriff 5 l for the king's uſe, or until he ſhall be diſcharged by the court of exchequer as aforeſaid. *id.*

Power of juſtices in caſe of ſhips, cattle and carriages forfeited.

4. And here, on occaſion of the forfeiture of the boat or veſſel, mentioned in the preceding ſection, it is proper to take notice of a general clauſe in the ſtatute of 8 *G. c.* 18. which brings the cognizance not only of the ſaid forfeiture, but alſo of ſeveral others hereafter following, under the juriſdiction of the juſtices of the peace; and conſequently enlarges conſiderably this title relating to the cuſtoms: to wit, In regard that the keeping and maintaining the horſes ſeized, from the time of the ſeizure, to the time of condemnation in the court of exchequer, is very chargeable, and the charge of condemning ſuch veſſels, boats, and horſes, is very great; therefore it is enacted, that all ſeizures of veſſels or boats of 15 tons or under, by virtue of any act relating to the cuſtoms, for carrying uncuſtomed or prohibited goods, or for relanding debenture goods; and all ſeizures of horſes, or other cattle, or carriages for carrying ſuch goods, may be heard and determined in ſuch manner as is appointed by the act of 6 *G. c.* 21. except as therein excepted; that is to ſay, All ſuch ſeizures may in a ſummary way be determined by two juſtices of the peace reſiding near the place where the ſeizure is made; who ſhall ſummon the party accuſed, and on appearance or default proceed to hear and give judgment, and iſſue warrants for ſale of ſuch as ſhall be by them condemned: whoſe judgment ſhall not be liable to any appeal or certiorari. 8 *G. c.* 18. *ſ.* 16.

Justices on trial to proceed on the merits.

5. And by the 9 *G.* 2. *c.* 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *s.* 34.

Officer on trial need not prove his commission.

6. And if any question shall arise, whether any person be an officer of the customs, proof shall be admitted, that such person was reputed to be, and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission. 11 *G. c.* 30. *s.* 32.

Proof to lie on the owner.

7. And if any dispute shall arise, whether the customs have been paid; the proof shall lie on the owner, and not on the officer. 12 *G. c.* 28. *s.* 8.

Goods relanded after drawback.

8. If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debentures to be made forth for any such drawback, shall not be really and *bona fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officer of the port; then not only all such certificate goods shall be forfeited, but also the person relanding the same, or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double value of the drawback, together with the vessels, boats, horses, cattle, and carriages, made use of in landing or carrying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at *Westminster*. 8 *Ann. c.* 13. *s.* 16. But by the clause abovementioned, the boats, cattle, and carriages, may be recovered before the justices of the peace.

Unshipping with intent to land.

9. By the 8 *Ann. c.* 7. If any goods shall be unshipped, with intention to be landed, without paying customs, or if any prohibited goods shall be imported; then not only the said goods shall be forfeited, but also the persons assisting or concerned therein, or to whose hands they shall come, shall forfeit treble value, together with the vessels, boats, horses, and other cattle, and carriages; half to the king, and half to him that shall seize or sue. *s.* 17.

And by the 19 *G.* 3. *c.* 69. Any officer of the customs or excise, and their assistants, may arrest persons who shall be found aiding in and unshipping any uncustomed or prohibited goods to be laid on land; and shall forthwith carry them before a justice residing near: who shall, if he see cause, commit the offender to the next county gaol, till the next general quarter sessions. In which case, the officer shall enter into recognizance in 40 l, to appear and prosecute. And the justices at such sessions

ſhall hear and determine the offence, and in lieu of any other puniſhment by any former act, may commit the offender to hard labour in the houſe of correction, not exceeding three years, nor leſs than one. And the commiſſioners ſhall order the charges of proſecution to be paid by the receiver general of the cuſtoms or exciſe reſpectively. *ſ.* 8.

Power to ſearch.

10. Any perſon authorized by writ of aſſiſtants out of the exchequer, may take a conſtable or other publick officer near, and in the day time enter any houſe or place, and in caſe of reſiſtance break open doors, cheſts, and other package, there to ſeize, and from thence to bring goods prohibited and uncuſtomed, and ſecure them in the king's warehouſe. 13 & 14 *C.* 2. *c.* 11. *ſ.* 5.

Goods paſſing may be ſtopped and ſeized.

11. If prohibited or cuſtomable goods ſhall be found by any officer of the cuſtoms, in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water ſide, without the preſence of an officer, or if ſuch goods ſhall, on information of a credible perſon, be found in any houſe or place, on ſearch made as by the ſaid ſtatute of 13 & 14 *C.* 2. *c.* 11. ſuch officer may ſtop and put the ſaid goods in the king's warehouſe, until the claimer ſhall make proof before the commiſſioners, if it be in the port of *London*, that the duties have been paid or ſecured, or that the ſame had been bought in a lawful way of trade, and that ſuch perſon verily believes the duties to have been paid, or that the ſaid goods had been compounded for, or condemned in the exchequer, or been otherwiſe delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwiſe delivered, as aforeſaid; in which caſe, the goods ſhall be delivered without delay or charge. And if the goods be ſtopped in any other port, the claimer ſhall make the like proof and deliver the ſame to the collector, or in his abſence to one of the other principal officers of the port, which proof ſhall forthwith be tranſmitted to the commiſſioners for their directions touching the delivery of the goods, or for ſeizing the ſame and proſecution. 6 *G.* *c.* 21. *ſ.* 39.

Provided ſuch proof be made within ten days; in failure whereof the goods may be ſeized and proſecuted as by the laws againſt the importation of prohibited or uncuſtomed goods. *ſ.* 40.

If on ſuch proſecution, where no application hath been made to the commiſſioners or officers aforeſaid, and not otherwiſe, the property of the goods ſhall be claimed, and the queſtion ſhall ariſe whether the duties were paid, or the goods had been compounded for, or condemned, or

otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recovers his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. *s.* 41.

Where the claimer shall make proof, either by oath before a justice of the peace, or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner shall receive any damage by such stop; he may bring his action for his reasonable damages. *s.* 42.

But the officer, if he pleases, may prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery of his goods with full costs; or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. *s.* 43.

Goods taken in at sea.

12. If any foreign goods shall be taken in at sea, or put out of any ship within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful reason, of which the master shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive); the same shall be forfeited, and every person aiding or concerned therein shall forfeit treble value; and the vessel into which the same shall be taken, shall be forfeited, not exceeding 100 tons; and the master of the vessel out of which they are taken, shall also forfeit treble value; half to the king, and half to him that shall seize or sue. 9 *G.* 2. *c.* 35. *s.* 23.

Vessel hovering near the coast.

13. Where any vessel, coming from foreign parts, having on board any goods liable to forfeiture by any act now in force on being imported, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the master or other person having charge of the vessel shall give notice and make proof before the collector or other chief officer of the customs, immediately after the arrival of the vessel in such port: all such goods, together with the chests, boxes, casks, and other package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also, with her tackle and furniture, shall be forfeited, provided such vessel doth not exceed the burthen of 50 tons; half the produce, after the

ſale thereof, (charges deducted,) to be to the king, and half to the officer who ſhall make the ſeizure. 5 *G.* 3. *c.* 43. *ſ.* 38.

And by the 19 *G.* 3. *c.* 69. When any tea, coffee, foreign ſpirituous liquors, or any goods whatſoever, are liable to forfeiture for being found on board any ſhip coming from foreign parts, at anchor, or hovering within the limits of any port, or within two leagues of the coaſt, or for having been diſcovered to have been within the limits of any port contrary to any act of parliament now in force; the ſhip, if coming from any part of Europe, together with her tackle and furniture, ſhall be forfeited, provided ſuch ſhip doth not exceed 200 tons. *ſ.* 2.

And any officer of the cuſtoms or exciſe (producing his warrant of deputation, if required) may go on board any coaſting veſſel, and ſearch for prohibited and uncuſtomed goods, and continue on board during the veſſel's ſtay within the limits of the port; and if any perſon ſhall obſtruct him he ſhall forfeit 100 l. 9 *G.* 2. *c.* 35. *ſ.* 29.

Importing in caſks under ſize.

14. Where any foreign ſpirituous liquors ſhall be imported from any part of Europe, in any veſſel not containing 60 gallons at the leaſt (except only for the uſe of the ſeamen, not exceeding two gallons each); the ſame, and alſo the ſhip, of whatever burden, with all her tackle and furniture, ſhall be forfeited. 19 *G.* 3. *c.* 69. *ſ.* 1.

Penalty on the maſter, mate, or ſeamen.

15. Where the officers of cuſtoms or exciſe ſhall find on board of any ſhip coming from foreign parts, within the limits of any port of this kingdom, more than one hundred pounds weight of tea (not being in an Eaſt India ſhip), or more than a hundred gallons of foreign brandy or other foreign ſpirituous liquors (over and above two gallons for every ſeaman) and being in caſks under 60 gallons; the maſter, or other perſon having charge of the ſhip, ſhall forfeit 300 l. And the ſaid officers or their aſſiſtants, may arreſt ſuch maſter or other perſon, and carry him before a juſtice reſiding near; who ſhall before the juſtice enter into a recognizance of 300 l, to appear in the court of exchequer within the firſt four days of the next term, to any information that may be exhibited againſt him: And the juſtice ſhall tranſmit the recognizance to the king's remembrancer in the ſaid court. And if ſuch perſon ſhall refuſe to enter into ſuch recognizance, the juſtice ſhall commit him to the next county gaol till he ſhall enter into ſuch recognizance. 19 *G.* 3. *c.* 69. *ſ.* 7.

And by the 21 *G.* 3. *c.* 39. If the maſter ſhall conceal, or ſuffer to be concealed by his mate or ſeamen, any

quantity of foreign ſpirituous liquors above two gallons for each ſeaman, or tea above ſix pounds, or coffee above nineteen pounds; or clandeſtinely import, or ſuffer to be imported, any ſuch foreign ſpirituous liquors, or any other uncuſtomed goods whatſoever, whereby the owner becomes liable to any penalties, or the veſſel is liable to be forfeited: the maſter ſhall not only forfeit to the owner all his wages, but alſo treble value of ſuch ſpirituous liquors, tea, coffee, or other uncuſtomed goods, over and above the penalties to which the maſter ſhall be liable by any law now in force; to be recovered of ſuch maſter by the owner, to his own uſe.

And if the mates or ſeamen ſhall conceal or import any of the ſaid goods, above the quantities ſo allowed as aforeſaid; they ſhall forfeit to the owner their wages, and alſo 10s for every gallon of ſpirituous liquor, and for every pound of tea or coffee: And if it be in time of war, the owner may ſend them for three years to ſerve on board any of his majeſty's ſhips; unleſs they be old, diſabled, or otherwiſe unfit. If it is in time of peace, and they ſhall not pay, and alſo if ſuch perſon diſabled ſhall not pay, on conviction, one juſtice may commit them to goal, for three months, or not leſs than ſix weeks.

Provided, that the juſtices may mitigate the penalties under this act, ſo as not to remit above one moiety.

And a printed copy of this act ſhall be put up and continued on ſome conſpicuous part of every Britiſh trading veſſel; on pain of the maſter forfeiting to the owner 1s a day for every omiſſion, to be recovered by warrant under the hand and ſeal of one or more juſtices. [But no power is given to levy the ſame by diſtreſs.]

Perſons lurking within five miles of the coaſt.

16. On oath made before a juſtice of the peace, that any perſon is lurking within five miles of the ſea coaſt or any navigable river, and there is reaſon to ſuſpect that he waits with intent to be aiding in running goods, the juſtice may grant his warrant to bring him before him; and if he ſhall not give a ſatisfactory account of himſelf and his employment, or otherwiſe make it appear that he is not concerned in any clandeſtine or unlawful buſineſs, he ſhall be committed to the houſe of correction, to be whipt and kept to hard labour not exceeding one month: And the commiſſioners of the cuſtoms or exciſe ſhall cauſe to be paid to the informer a reward of 20s for each offender. 9 *G.* 2. *c.* 35. *ſ.* 18.

But if ſuch perſon ſhall deſire time for clearing himſelf, he ſhall not be puniſhed by whipping or other correction, but committed to the common gaol till he ſhall ſo do, or

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till he find ſecurity not to be guilty of any the ſaid offences. *ſ.* 19.

17. If any perſon ſhall knowingly receive or buy any run goods; he ſhall on conviction (after ſummons) by confeſſion, or oath of one witneſs, before one juſtice where the offence ſhall be committed or the offender ſhall be found, forfeit 20l, half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to priſon for three months. 8 *G. c.* 18. *ſ.* 10. Buying or receiving run goods.

18. And by the 11 *G. c.* 30. If any perſon ſhall harbour, keep, or conceal, or ſuffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay cuſtoms; he ſhall (whether he claim any property in them or not) forfeit the ſame, and treble value, to be recovered and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*, half to the king, and half to him that ſhall ſue. *ſ.* 16. Concealing run goods.

19. And if any perſon ſhall offer to ſale any prohibited goods, or which have been, or are by him pretended to have been run; the ſame, together with the package ſhall be forfeited, and be ſeized by the party to whom they are offered to ſale, or by any officer of the cuſtoms or exciſe. Provided that if the ſeizure is within the bills of mortality, then within 24 hours, if elſewhere within 48 hours, they be put into the king's warehouſe near the place of ſeizure, and if it be far from any ſuch warehouſe, then in ſome exciſe office near. 11 *G. c.* 30. *ſ.* 18. Offering to ſale run goods.

And the perſon offering them to ſale, ſhall alſo forfeit treble value. *ſ.* 19.

And the ſaid goods, if ſold, may be ſeized (with the package) from the buyer, either by the ſeller or any ſuch officer. *ſ.* 20.

And the buyer ſhall alſo forfeit treble value. But both buyer and ſeller ſhall not be proſecuted for the ſame goods, but whether of them ſhall firſt proſecute the other ſhall be diſcharged; but if proſecution ſhall not be commenced in a month, the warehouſe keeper may proſecute. *ſ.* 21.

Which ſaid forfeitures ſhall be recovered and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; half to the king, and half to him that ſhall ſue. *ſ.* 39.

20. All porters, and others, knowingly carrying run or prohibited goods, and who ſhall be convicted thereof (on appearance or default) on the oath of one witneſs, or confeſſion, before one juſtice where the offence ſhall be committed, or the offender found, ſhall forfeit treble value, half to the informer, and half to the poor, to be levied by diſtreſs by warrant of ſuch juſtice, and for want of diſtreſs Porter carrying run goods.

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to be committed to the house of correction, to be whipt and kept to hard labour not exceeding three months. 9 *G.* 2. *c.* 35. *s.* 21.

Persons armed or disguised carrying run goods.

21. By the 8 *G. c.* 18. Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than five in number, or armed, or disguised, or who shall forcibly resist the officers of the customs or excise in seizing run goods, shall be guilty of felony, and transported for seven years. *s.* 6.

But if any offender shall in two months after his offence and before conviction, discover his accomplices, so as two or more be convicted; he shall have a reward of 40 l, if the value of the run goods exceed 50 l, and shall be acquitted. *s.* 7.

And any other person discovering any one offender, in three months, so as he be convicted, shall have in like manner 40 l, over and above what he may be intitled to on account of the said run goods. *s.* 8.

By the 9 *G.* 2. *c.* 35. Persons being two or more in company, who shall be found passing within five miles from the coast, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than six pounds of tea, or spirituous liquors exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30 l value, landed without entry and payment of duties, and shall carry any offensive arms, or wear any disguise, or shall forcibly obstruct, or resist any officer of the customs or excise in seizing or securing any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the said act of 8 *G. c.* 18. altho' no proof shall be made that such goods were run, or had not been entred and paid duty; but the proof of such entry and payment, and how they came by the goods, shall lie on such persons; and every person convicted of any such offence, shall be guilty of felony, and transported for seven years. *s.* 13.

And all the goods so found, weapons, horses, cattle, carriages, and their furniture, chests, bags, casks, and other package shall be forfeited. *s.* 14

And if any officer or other person shall lose any limb, or be otherwise maimed or dangerously wounded by any offender last mentioned, or in endeavouring to apprehend him, he shall on the conviction of such offender have a reward of 50 l, over and above any other reward he may be intitled to by this act. *s.* 15.

And

And if any perſon be killed in endeavouring to apprehend ſuch offender, his executors or adminiſtrators (on certificate under hand and ſeal of the judge of aſſize for the county where the fact was done, or of the two next juſtices of the peace, of ſuch perſon being ſo killed) ſhall have 50l, over and above any other reward they may be intitled to by this act. *ſ.* 15.

And if any perſon ſhall, in three months after ſuch laſt mentioned offence committed, diſcover to the commiſſioners of the cuſtoms or exciſe, any offender ſo as he be convicted; he ſhall have 50l, over and above any other reward he may be intitled to by any law. *ſ.* 16.

And the commiſſioners of the cuſtoms or exciſe ſhall cauſe the rewards to be paid out of the ſaid revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing ſuch certificate of the perſon being killed: and if any diſpute ſhall ariſe between the perſons intitled to the reward, the ſame ſhall be adjudged by the commiſſioners. *ſ.* 17.

And by the 19 *G.* 3. *c.* 69. If any perſons, to the number of two or more, ſhall be found paſſing with any horſe, cart, or carriage, whereon ſhall be laden more than ſix pounds weight of tea, or foreign ſpirituous liquors exceeding five gallons, not having paid the duty, and not having a permit; and ſhall carry any offenſive arms, or wear any diſguiſe, when paſſing with ſuch tea or ſpirituous liquors: any officer of the cuſtoms or exciſe, and all other perſons acting in their aid, may arreſt the offenders, and carry them before a juſtice, who (if he ſees cauſe) ſhall commit them to the next county gaol, till the next general quarter ſeſſions. And in ſuch caſe, the officer who conveys any ſuch offender before the juſtice ſhall enter into recognizance in 40l, to appear and proſecute. And the commiſſioners ſhall order the charges of proſecution to be paid by the receiver general of the cuſtoms or exciſe reſpectively. And the juſtices, at ſuch ſeſſions, ſhall hear and determine the offence. And if the offender be convicted, they ſhall, in lieu of any other puniſhment by any former act, commit him to hard labour in the houſe of correction, not exceeding three years, nor leſs than one. *ſ.* 9—15.

Apprehending riotous ſmugglers.

22. And upon information on oath before a juſtice of the peace, that any perſons, to the number of three or more, are or have been aſſembled, to be aiding in the clandeſtine running, landing, or carrying away prohibited and uncuſtomed goods, or to reſcue them after ſeizure, and armed with fire arms or other offenſive weapons; he ſhall grant

grant his warrant to the constables and other peace officers, requiring them to take to their assistance as many as may be thought necessary for apprehending such persons: and he may, if on examination he find cause, commit them to the next county goal, there to remain without bail or mainprize, until they be discharged by due course of law: and such persons, on conviction of their being assembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for seven years. 9 *G.* 2. *c.* 35. *s.* 10.

And the apprehender for every person convicted shall have a reward of 50*l*, immediately after conviction and demand made, tendring a certificate under the hand of the judge, certifying the conviction, and that he was taken by the person claiming the reward. *s.* 11.

And if any person shall lose a limb, be maimed or dangerously wounded, in apprehending or endeavouring to apprehend, or pursuing such offender; he shall on such conviction have a reward of 30*l*, over and above any other reward that he shall be intitled to by this act. *s.* 11.

And if any person shall be killed in taking, or endeavouring to take such offender; his executors or administrators (on certificate under the hand and seal of the judge of assize of the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50*l*, over and above any other reward they may be intitled to by this act. *s.* 11.

And if any offender shall in three months after his offence, and before his conviction, discover two or more accomplices, to the commissioners of the customs or excise, so as to be convicted; he shall have 50*l*, for every person so convicted, and be discharged of his offence. *s.* 12.

The said rewards to be paid as in the last section.

Outlawed smugglers.

23. By the 19 *G.* 2. *c.* 34. If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any officer in the seizing such goods,

goods, or dangerously wound any officer attempting to go on board any vessel, or shoot at or wound him when on board; he shall be guilty of felony without benefit of clergy. *s.* 1.

And persons charged with any the said offences, before a justice of the peace, by information on oath of one or more credible persons to be subscribed by him or them, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council; who may thereon make his order, commanding the offender to surrender in 40 days after the first publication thereof in the gazette, to the lord chief justice, or any other of the justices of the king's bench, or to some justice of the peace, who thereon shall commit him to gaol, to answer the charge against him according to due course of law: Which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be transmitted to the sheriff where the offence was committed; who shall in 14 days cause the same to be proclaimed between ten in the morning and two in the afternoon, in the market places, on the market days of two market towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some publick place in the said towns: And if such offender shall not surrender pursuant to such order, or escape after surrender, he shall be attainted of felony without benefit of clergy. *s.* 2.

And if any person after the time appointed for surrender, shall knowingly harbour such offender; he shall, on conviction within one year, be guilty of felony, and transported for seven years. *s.* 3.

And every person who shall take, or discover so that he may be taken, any person so advertised and not surrendring, and cause him to be brought before a judge of the king's bench, or justice of the peace for *London* or *Middlesex* (who shall commit him to *Newgate*), shall receive 500 l, in one month after execution awarded, from the commissioners of the customs or excise respectively: And if an offender, against whom no such order in council shall have been made, shall himself so discover or apprehend any other against whom an order hath been made; he shall be acquitted of all his own offences for which no prosecution is then commenced, and shall also have his share of the præmium: And if any person shall be maimed or grievously wounded in apprehending such offender; he shall receive 50 l, over and above such other reward as he may

may have as apprehender: And if any person shall be killed in apprehending, his executors or administrators shall receive 100 l. *s.* 10.

But nothing herein shall prevent ministers of justice from taking such offender by the ordinary course of law; but if he shall be taken before the expiration of the time limited for his surrender, no further proceedings shall be had upon the order made in council, but the offender shall be brought to trial by due course of law. *s.* 4.

And if any offender, before order for his surrender, shall discover two or more accomplices, so as they be convicted; he shall receive 50 l, for each, and be discharged of all offences for which no prosecution shall be then commenced. *s.* 11.

In the case of *John Harvey*, *E.* 20 *G.* 2. The attorney general, suggesting the several particulars to have been complied with as in this act specified, prayed that execution might be awarded according to the said act. The defendant traversed all the facts contained in the suggestion. On which, at another day, the attorney general went into the proof of the several issues.—The several facts touching the laying the information before the justice (Mr. *Burdus*) against the prisoner and others; his certifying it in due manner to the duke of *Newcastle*, secretary of state; the duke's laying it before the king in council; the order of council (which was produced under the seal of the council) requiring the prisoner and others to surrender within 40 days after publication in the *London* gazette; the transmitting this order to the printer of the gazette; the publication of it in due time in two successive gazettes; and the transmitting it to the sheriff of the county of *Suffolk*, in order to its being proclaimed and published as the act directeth,—were well proved. Then the under-sheriff of *Suffolk* and other witnesses were called to prove the proclaiming and fixing up the order in two market towns near *Beauacre*, the place where the fact is charged in the information taken by Mr. *Burdus* to have been committed. And it appeared on their evidence, that it was proclaimed and fixed up at *Ipswich*, which is 30 miles from *Beauacre*; at *Hadly*, which is 42 miles from *Beauacre*; and at *Leostoff*, which is 5 miles from *Beauacre*; and at no other places: and that there are five or six market towns nearer to *Beauacre* than *Ipswich*; particularly *Southwold* 5, and *Beacles* 8 miles.—Mr. *Ford*, assigned counsel for the prisoner, insisted that the act had not been complied with. The act indeed doth not say that it shall be in the *next* market towns, but still it must

be

be in the market towns *near* the place. And the distance of 30 miles cannot with any propriety be called *near*, when it appeareth, that there are at least three market towns within a third part of that distance.—And of this opinion was the court. This, they said, is a very penal law. And it would be of dangerous consequence to give the sheriff a greater latitude, than the legislature intended to give him. Some latitude it did intend to give, and therefore did not confine him to the *next* market towns, because that would have rendered the execution of the act difficult, and subject to great niceties. But the law did not intend to leave the matter wholly to the discretion of the sheriff, and therefore it requireth that it be done in the market towns *near* the place. This word is plainly restrictive of the sheriff's power. It is a guide to his discretion in the execution of the act. And what doth it mean? Not surely the most remote town; nor doth it mean a town comparatively remote, as it is plain from the evidence, *Hadly* and *Ipswich* are.———On the whole; the court without summing up the evidence, directed the jury to find for the king, on all the issues, except those which regarded the proclamations in the market towns near *Beauacre*; and on those to find for the prisoner, which they did. And then the court ordered, that the attorney general take nothing by his prayer. And that the prisoner be remanded to *Newgate*, in order to answer for the original offence he stands charged with in the information taken by Mr. *Burdus*, if the attorney general shall think fit to indict him for it. *Fost.* 51.

Note, This act of the 19 *G.* 2. *c.* 34. is but temporary; and it having been doubted (4 *Black.* 155.) whether this part relating to the surrender upon proclamation be not expired, because the several acts which have continued the same from time to time do not continue the whole, but only so much thereof as relates to the *punishment* of the offenders, and not to the extraordinary method of apprehending or causing them to surrender: Therefore it is declared and enacted, by the 19 *G.* 3. *c.* 69. that all and every the orders and directions relative to the surrender, proclaiming, apprehending, harbouring, and punishing offenders were continued and re-enacted by the said several acts of continuance, and may be lawfully exercised and used accordingly. *s.* 23.

24. Offences relating to the customs or excise, made felony by any act of parliament, may be tried in any county; but the attainder shall work no corruption of blood, loss of dower, or forfeiture of lands. 19 *G.* 2. *c.* 34. *s.* 5. Felonies may be tried in any county.

25. If

Obstructing officers.

25. If any person shall obstruct any officer of the customs or excise, in seizing uncustomed or prohibited goods; or shall rescue or attempt to rescue the same; or, after seizure, shall destroy or damage any casks, boxes, or package wherein the same shall be contained; such officers, or persons acting in their aid, may arrest the offender, and forthwith carry him before a justice near to the place where the offence was committed: and the justice shall, if he sees cause, commit him till the next general quarter sessions; where, if he shall be convicted, he shall be committed to the house of correction to hard labour, not exceeding three years, nor less than one. 19 *G.* 3. *c.* 69. *s.* 10, 11, 12.

Officers may oppose force with force.

26. If any person passing in a publick and avowed manner, with prohibited or uncustomed goods, and armed with pistols, guns, cutlasses, or other offensive weapons, shall molest or resist the officers of the customs or excise, endeavouring to seize the same, by beating, maiming, or wounding them, or any person assisting them; they may oppose force with force: And if any person so resisting the officers be wounded, maimed, or killed; such officers, or persons assisting them in their defence, may plead the general issue, and give this act and the special matter in evidence; and all justices of the peace, and others, before whom they shall be brought, shall admit them to bail. 9 *G.* 2. *c.* 35. *s.* 35.

Dangerously hurting an officer, finable.

27. By the 13 & 14 *C.* 2. *c.* 11. Where any officer or officers of the customs shall be by any person armed with club or any manner of weapon, forcibly hindred, affronted, abused, beaten, or wounded, to the hazard of their lives, either on board any ship, or on the land or water in execution of their office; every person so abusing any such officer or his deputy, or such as shall act in his aid or assistance, shall by the next justice or other magistrate be committed to prison to the next quarter sessions; and the said sessions shall punish him by fine, not exceeding 100 l, and the offender to remain in prison, till he be discharged by order of the exchequer both of the fine and of the imprisonment, or discover the person that set him on work. *s.* 6.

By eight or more, transportation.

28. And by the 6 *G.* *c.* 21. If any officer of the customs be forcibly hindred, wounded, or beaten, in the due execution of his office, by any persons armed with any manner of weapon, tumultuously assembled by day or night, to the number of eight or more; the offenders shall be transported for any term not exceeding seven years. *s.* 34, 35.

And

And if any offender ſhall in two months after his offence, and before conviction, diſcover his accomplices ſo as two be convicted, he ſhall have 40 l reward for each, and be acquitted. *ſ.* 36.

And if any other perſon ſhall in three months diſcover any offender ſo as he be convicted, he ſhall have 40 l, over and above any other reward on account of the run goods. *ſ.* 37.

The ſame to be paid by the receiver general, or caſhier of the cuſtoms, on producing the judge's certificate. *ſ.* 38.

Oppoſed on ſhip-board, tranſportation.

29. And by the 9 *G.* 2. *c.* 35. more generally it is enacted, that if any officer of the cuſtoms or exciſe, being on board any ſhip, be forcibly hindred, wounded, or beaten, in execution of his office, either by day or night; the offender ſhall be tranſported for ſeven years. *ſ.* 28.

Hundred ſhall anſwer damages.

30. And by the 19 *G.* 2. *c.* 34. *ſ.* 6. If any officer or other perſon employed in ſeizing any goods forfeited for being prohibited or uncuſtomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders againſt this act, ſhall be beaten or killed, or the goods ſeized be reſcued; the hundred ſhall anſwer damages, and alſo pay 100 l to the executors or adminiſtrators of ſuch perſon killed, ſo as the ſum for beating exceed not 40 l, nor for the loſs of goods 200 l, to be recovered and levied as in caſes of robbery by the 8 *G.* 2.

But no perſon ſhall recover damages for ſuch beating or loſs of goods, unleſs he give notice in four days to two inhabitants near, and in eight days make oath before a juſtice, whether he knew any of the perſons concerned, and if he did, he ſhall be bound over to proſecute; and unleſs, beſides the ſaid notice and recognizance, he give ſuch notice and enter into ſuch recognizance as perſons robbed by the 8 *G.* 2. are directed to give. *id. ſ.* 7.

And where the offender ſhall be convicted in ſix months, the hundred ſhall not be liable. *ſ.* 8.

Alſo the action againſt the hundred muſt be commenced within a year. *ſ.* 9.

Penalty on officers not doing their duty.

31. If any officer of the cuſtoms or exciſe ſhall not uſe his beſt endeavours to ſeize any tea, coffee, or foreign ſpirituous liquors, or to ſtop, detain, and carry before one or more juſtices any offender; in ſuch caſe, one juſtice reſiding near to the place where ſuch officer ſhall make default, on complaint thereof made to him within three months after ſuch default, may

examine into the truth of such complaint: and if it shall appear to the said justice that there is reasonable ground for the complaint, he shall transmit the said complaint, together with the examinations taken before him thereon, unto the commissioners of the customs or excise respectively; who shall, by such ways and means as to them shall seem meet, examine into the truth of the premisses. And in case they shall think fit on the ground thereof to dismis the officer from his majesty's service, he shall be incapable of executing any office in the customs or excise for the future.——Provided, that no person shall be compelled to go above five miles from his usual place of abode, to be examined before any justice, upon any complaint made to him as aforesaid. 19 *G.* 3. *c.* 69. *s.* 32.

II. Of the excise in general.

Head office, and commissioners.

1. One principal head office of excise shall be kept in *London*, or within ten miles thereof, to which all other offices in the kingdom shall be subordinate and accountable; which said office shall be managed by such commissioners, as the king shall appoint. 12 *C.* 2. *c.* 24. *s.* 46. 5 *W.* *c.* 20. *s.* 16.

Subcommissioners, and other officers.

2. And all places within the bills of mortality shall be under the immediate care and management of the said head office; and such and so many subordinate commissioners, and subcommissioners, and other officers shall be appointed by the king in other places, as he shall think fit. 12 *C.* 2. *c.* 24. *s.* 48.

Office when to be kept open.

3. And the excise office in all places where it shall be appointed, shall be kept open from eight in the morning, till two in the afternoon. 23 *G.* 2. *c.* 26. *s.* 12.

Office in market towns,

4. And the commissioners or subcommissioners shall appoint under their hands and seals, such persons as they shall think needful in each market town, to be there upon every market day, in some known and publick place, for receiving entries and duties, and performing all other things touching the revenue of excise: And if such office shall not be so kept in each market town, the commissioners or others neglecting or refusing, shall for every market day forfeit 10 *l.* And such person as shall come to such market town to make his entry or payment, and tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty for such weekly or monthly entries or payments, as should have been made or paid on such market day. 15 *C.* 2. *c.* 11. *s.* 10. 5. The

Collections, districts, and other divisions.

5. The kingdom of *England* and *Wales* (exclusive of the bills of mortality) is divided into about 50 *collections*; some called by names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties: Every collection is subdivided into *districts*, within each of which there is a *supervisor*; and each district is parcelled into *out rides* and *foot walks*, within each of which there is a *gager* or surveying officer. *Gilb. Exch.* Append.

Gagers.

6. The commissioners or subcommissioners, in their respective circuits and divisions, shall constitute under their hands and seals, such and so many gagers as they shall find needful. 12 *C.* 2. *c.* 24. *s.* 33.

In order to which, he who would be made a gager, must procure a certificate, that he is above 21, and under 30 years of age; that he understands the four first rules of arithmetick; that he is of the communion of the church of *England*; how he has been employed, or what business he hath followed; that he is not incumbred with debts; whether single or married; and if married, how many children he has, for if he has above two, he cannot (by the rules of the office) be admitted. *Gilb. Excheq.* App.

He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient ability; and that the said certificate is of his own hand writing: Such certificate, written by him, must be signed by the supervisor of excise where the party applying lives. *id.*

At the bottom of the certificate must be his affidavit, that neither he, nor any else to his knowledge, hath directly or indirectly, given or promised to give any treat, fee, gratuity, or reward, for his obtaining or endeavouring to obtain an order for his being instructed. *id.*

When an order for instruction is granted, it is directed to an experienced officer, who receives such person as his pupil; and the like books as officers have, being delivered to such pupil, he goes with and attends the officer who instructs him, and takes surveys, and in his own books makes the like entries as if he was an officer, until the instructor certifies that he is fully instructed. *id.*

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens. *id.*

Officer's Oath.

7. No person shall be capable of intermeddling with any office relating to the excise, until he shall before two jus-

tices in the county where his employment ſhall be, or before a baron of the exchequer, take the oaths of allegiance and ſupremacy, together with this oath following;

You ſhall ſwear to execute the office of——truly and faithfully, without favour or affection, and ſhall from time to time true account make and deliver to ſuch perſon or perſons as his majeſty ſhall appoint to receive the ſame, and ſhall take no fee or reward for the execution of the ſaid office, from any other perſon than from his majeſty, or thoſe whom his majeſty ſhall appoint in that behalf. 12 C. 2. c. 24. ſ. 47.

And the juſtices ſhall certify the taking of ſuch oath to the next quarter ſeſſions, there to be recorded. *ſ.* 48.

And the officer ſhall alſo enter a certificate thereof with the auditor of the exciſe: And if any ſuch perſon ſhall act before he hath taken the ſaid oaths, and entered his certificate with the auditor aforeſaid, he ſhall forfeit 50l a month. 15 *C.* 2. *c.* 11. *ſ.* 27.

And he ſhall alſo, within ſix months after his admiſſion to the office, take the oaths and ſubſcribe the declaration againſt tranſubſtantiation, at the quarter ſeſſions; in like manner as other perſons admitted to offices.

Officers general duty.

8. The buſineſs of the *ſupervisor* is to be continually ſurveying the houſes and places of the perſons within his diſtrict liable to duties; and to obſerve and ſee whether the officers duly make their ſurveys, and make due entries thereof in their books and in their ſpecimen papers; and every ſupervisor is in his own book to enter what himſelf does, each day and part thereof; and alſo ſet down the behaviour good or bad, the diligence or negligence, of the ſeveral officers of his diſtrict; and at the end of every ſix weeks, to draw out a diary of every day's buſineſs, and of the remarks made each day of the ſeveral officers in his diſtrict, and to tranſmit ſuch diary at the end of every ſix weeks to the chief office. *Gilb. Exch.* Append.

Each commiſſioner takes and peruſes a proportion of theſe diaries, and when he meets with any remarkable complaint againſt any officer, he communicates it to the reſt; who thereupon come to an agreement, either to *admoniſh*, *reprimand*, *reduce*, or *diſcharge*. For ſmall faults, officers are admoniſhed; for great ones, reprimanded; for greater, reduced; but for the greateſt, they are diſcharged. The commiſſioner who peruſes the diary, writes in the margin, admoniſh, reprimand, or as the caſe is. *id.*

Theſe diaries, after having been thus written upon, are delivered to the clerk of the diaries, who in a book, called the reprimand book, places the admonitions, reprimands, and the like, to each officer's account, and writes every offender

offender word thereof. Which reprimand book is resorted to, upon discovering new faults; and if it is there found, that the officer has before been admonished and reprimanded so often, that there are no hopes of his amending, he is then discharged. The said book is likewise resorted to, when application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. *id.*

The *collector*'s business is, every six weeks to go his rounds; and in the intervals of rounds, he is to be assisting in prosecuting offenders before the justices; he is also to peruse the supervisor's diaries, and where he finds an officer complained of, is to examine him and the supervisor, and having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. *id.*

For faults, gagers are *reduced*, either to be only assistants, or from foot walks to out rides; supervisors are reduced to be again only gagers; and collectors are reduced to be supervisors. *id.*

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged, are never again restored, unless one of the discharges appears to have been occasioned by a misrepresentation of the case. *id.*

Penalties by the excise laws.

9. In the Act of the 24 *G.* 2. *c.* 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this: All *fines penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means, as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at* Westminster, *and shall be half to the king, and half to him that shall inform or sue.* s. 33.

By two justices.

10. That is to say, *If it is within the limits of the chief office in* London, *the offences shall be determined by the commissioners (or any three of them,* 1 G. 2. st. 2. c. 16. s. 4, 5.) *or, in case of appeals, by the commissioners of apppeals: in all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in*

caſe of neglect or refuſal of ſuch juſtices by the ſpace of 14 *days next after complaint made, and notice thereof given to the offender; then the ſubcommiſſioners may hear and determine the ſame: And if the party find himſelf aggrieved by the judgment given by the ſaid ſubcommiſſioners, he may appeal to the next quarter ſeſſions, whoſe judgment therein ſhall be final. Which ſaid commiſſioners for appeals, and chief commiſſioners for exciſe, and all juſtices of the peace, and ſubcommiſſioners aforeſaid, are required upon any complaint or information exhibited and brought, of any ſuch forfeiture made or offence committed, to ſummon the party accuſed, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confeſſion of the party, or by the oath of one credible witneſs, to give judgment or ſentence, and to iſſue warrants under their hands, for levying the ſame on the goods and chattels of the offender, and to cauſe ſale to be made thereof, if not redeemed in* 14 *days; and for want of ſufficient diſtreſs, to impriſon the party offending till ſatisfaction be made.* 12 C. 2. c. 24. ſ. 45.

Reſiding near] Where the *next* juſtices are impowered to proceed in any matter, they and no other ought in ſuch caſe to act; but where it is only directed, that the juſtices reſiding *near* ſhall do ſuch a thing, thoſe words are not reſtrictive, but only directory, and any juſtices, altho' not the *next* juſtices, may proceed therein. *Shaw.* Exc.

But where the act ſays, that *any two juſtices reſiding near* to the place where the forfeiture ſhall be made, or the offence committed, ſhall hear and determine the matter, it doth not intend that the juſtices of a county at large dwelling near to a town corporate, which hath juſtices of its own, and an excluſive charter, ſhall have power to intermeddle with regard to offences committed within ſuch town corporate; but only to veſt the juriſdiction in juſtices of counties, cities, and places, with reſpect to their local juriſdictions within ſuch places. *T.* 14 *G.* 2. *Talbot* and *Hubble.* Str. 1154.

Upon any complaint or information exhibited] By theſe words it is not neceſſary that the information be exhibited *in writing*; but if it is a verbal information, the juſtices ought to make a record thereof, and of the time and place, when and where exhibited, which muſt be expreſſed in the preſent, and not in the time paſt: But to ſave the juſtices that trouble, it is uſual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying ſuch information,

information, leaving therein blanks for the names of the juſtices, and the day and month and year and place when and where laid; and when thoſe blanks are filled up by direction or conſent of the juſtices, then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the proſecution was in the proper county; and therefore though it may happen, that for laying the information, the proſecutor may be obliged to attend one juſtice in one town, and another juſtice in another town, it muſt not be mentioned, that the information was laid at both towns, for that would be abſurd; but in ſuch caſes it is uſual to expreſs that the information is laid at the town where the hearing is intended to be. *Shaw.* Exc.

Proceed to the examination of the fact] And by the 9 *G.* 2. *c.* 35. it is enacted, that in trials of ſeizures, the juſtices ſhall proceed to the merits of the cauſe, without inquiring into the form or manner of ſeizure. *ſ.* 34.

Give judgment] Altho' it hath been ſaid, that whatever is recorded by the juſtices or their order, ought to be expreſſed in words of the preſent time and tenſe; yet that doth not make it neceſſary, nor is it indeed practicable, that all that is to be ſo entred ſhould actually be entred at the inſtant of time when ſuch judgment is given; for ſuch entring the whole at that time would hinder the diſpatch of buſineſs, and delay the hearing of cauſes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to ſuch ſhort minutes or notes as are then taken by ſuch juſtices, it will be as authentick as if it had been entred at the inſtant of time in which ſuch order was made, or judgment was given. *Shaw.* Exc.

And to iſſue warrants under their hands] Altho' it is here only directed, that the warrant ſhall be under the *hands* of the juſtices; yet ſince it is generally implied in all warrants, that they are both under *hand* and *ſeal*, it is ſafe at leaſt, if not neceſſary, that this warrant alſo amongſt the reſt, be both *ſigned* and *ſealed*.

For levying the ſame on the goods and chattels of the offender] And in caſe where the offender ſhall remove out of the juriſdiction, it is enacted by the 18 *G.* 2. *c.* 26. *ſ.* 13. and 5 *G.* 3. *c.* 43. *ſ.* 26. that the commiſſioners and juſtices reſpectively, within whoſe juriſdiction any perſon charged by any act concerning the duties of exciſe, or any other duties under the management of the commiſſioners

of excise, or who hath committed any offence against any of the said acts, shall be found, may summon, hear, adjudge, and determine, and issue any process or warrant, in the same manner as before they might have done in case of such offences committed within their jurisdiction; and if they shall, upon any judgment given by them, issue a warrant of distress, and the person authorized to execute the warrant shall make a return thereto that no sufficient distress can be found, it shall be lawful for the said commissioners and justices respectively, within whose jurisdiction the party shall at any time be found, against whom such warrant shall have been issued, upon producing to them such warrant, and return thereof, to commit such offender to the next county gaol till satisfaction be made.

And to cause sale to be made thereof if not redeemed in 14 *days*] But by the 27 *G.* 2. *c.* 20. the justices may not order the distress to be detained more than eight days, nor less than four.

For want of sufficient distress] Mr. *Shaw* and Mr. *Barlow* are of opinion, that where there are some goods, but not sufficient for satisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue; which may seem hard sometimes, when the defendant shall perhaps satisfy nearly the whole sum, and moreover be imprisoned as much as if he had paid nothing; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue, but shall either pay the whole, or be imprisoned for the whole: but perhaps the distinction may be this; where there is a limited time of imprisonment, as for instance, three months, there the defendant shall not pay part, and then be imprisoned the whole three months, which would be to punish him both ways; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty, and if part of it is paid already, the inlargement may come the sooner, by payment of the residue.

Imprison the party till satisfaction be made] But before any warrant can be made to arrest and imprison the person of the defendant, there must be first a warrant to seize the utensils in custody of such offender, and the offender's goods; and that warrant must be returned: all which must be done, before any warrant can be regularly made, to arrest and imprison the defendant's person. Which method ought

ought to be obſerved, tho' perhaps it may be well known by, or ſufficiently proved before the juſtices, that all the utenſils and all the defendant's goods are carried off; for the law being in all caſes very tender of depriving men of their liberty, it is neceſſary that all poſſible means ſhould be uſed to levy the money on ſuch goods, before the perſon of the defendant be impriſoned. But if a warrant to ſeize the utenſils and the goods, be made and delivered to an officer to be executed; and if ſuch officer, having made diligent ſearch, cannot find any ſuch, then a warrant may be made to arreſt and impriſon the perſon of the defendant. But then there ought to be a duplicate made of ſuch warrant; becauſe the keeper of the priſon cannot regularly receive the offender without a warrant, and the officer ought alſo to have and keep a warrant for his own juſtification. *Shaw.* Exc.

Summoning witneſſes.

11. By the 7 & 8 *W.* *c.* 30. The commiſſioners and juſtices may ſummon witneſſes, to appear before them at a certain day, time, and place, to be inſerted in ſuch ſummons, and to give evidence; and in caſe of neglect or refuſal to appear, or if upon appearance any ſhall refuſe to give evidence, he ſhall forfeit 10*l.* *ſ.* 24.

And a ſummons left at the houſe or uſual place of reſidence, or with the wife, child or menial ſervant of the perſon accuſed, ſhall be as effectual, as if delivered to the perſon himſelf. 32 *G.* 2. *c.* 17. *ſ.* 1.

And in all caſes relating to the exciſe, or to any of the duties under the management of the commiſſioners of exciſe (except where particular proviſions are made for ſummoning offenders, or for condemning of ſeizures made from perſons unknown); the leaving ſuch ſummons at the houſe, work-houſe, ſhop, cellar, vault, or uſual place of reſidence of ſuch perſon, directed to him by his right or aſſumed name, ſhall be as effectual as if delivered to him in perſon, and as if directed to him by his proper name. *ſ.* 2.

Officer on trial need not produce his commiſſion.

12. If upon trial, any queſtion ſhall ariſe, concerning the keeping of any office of exciſe, or concerning any perſon's being an officer; proof ſhall be admitted of the actual keeping of ſuch office, or of ſuch perſon's actually exerciſing ſuch office, without proving or producing the commiſſion. 6 *G.* *c.* 21. *ſ.* 24. 11 *G.* *c.* 30. *ſ.* 32.

Proof to lie on the owner.

13. By 6 *G.* *c.* 21. *ſ.* 41. and 12 *G.* *c.* 28. *ſ.* 8. If on trial any diſpute ſhall ariſe, whether the exciſe or other inland duties ſhall have been paid for any foreign goods ſeiſed; the proof ſhall lie on the owner, and not on the officer. And by the 23 *G.* 3. *c.* 70. *ſ.* 35. If any goods liable to duties of exciſe or inland duties ſhall be ſeized, or

or if any action shall be brought by the owner or claimer of any such goods against any officer of excise or his assistant; proof of payment of the duties shall lie upon the owner or claimer, and not on the person who seized the same, or against whom the action shall be brought.

E. 12 *G.* 3. *Salamon* and *Gordon.* Trespass for taking four boxes of plate glass; and, on Not Guilty pleaded, the cause came on to trial at *Guild-hall* before *Blackstone* justice at the sittings after Hilary term. It appeared in evidence, that the goods were seized in the open streets of *London*, from the plaintiff's porter, who was carrying them from a warehouse, where they had laid three months, unto the plaintiff's house; in the passage to which, they did not go near the water side: That the defendants were custom house officers, and seized the goods about nine of the clock in the evening, under a suspicion of their not having paid the duties. The defendants admitted these facts; but insisted, that under the statutes the *onus probandi* that these goods had paid duty lay upon the plaintiff; in default of which, the seizure was justifiable. The judge was of a different opinion, and thought the defendant, in an action of trespass, must shew the goods were forfeited: And the plaintiff recovered a verdict. It was moved for a new trial, and urged, that the provisions in the statutes extended to all cases, as well actions as prosecutions. On the other hand, it was insisted, that they related, not to actions of trespass, but only to prosecutions in the exchequer. And of that opinion was the court. If it were otherwise, a custom house officer might enter into any man's house (within the year allowed in such cases), and seize any foreign goods, books, silks, laces, or any thing liable to the customs, and put the owner upon proof, that the duties have been paid. And the rule for a new trial was discharged. *Black. Rep.* 813.

M. 18 *G.* 3. *Henshaw* and *Pleasance.* An action of trespass was brought against certain officers of excise, for seizing a quantity of soap, supposed to be irregularly lodged and concealed. Which came to be tried before *Blackstone* justice at the sittings in *London* during the last Trinity term. It appeared in evidence, that a warrant, grounded on an oath of suspicion, was granted to the defendants by the commissioners of excise, on the 25th of February 1777, to seize the said soap: That on the 26th, upon the return of the seizure, an information was ordered by the commissioners against the plaintiff: That on the 28th, *Henshaw* brought his action, and sued out process against the defendants; delivered declaration on the

the 19th of April; and, upon the plea of Not Guilty, gave notice of trial on the 25th of April, for the ſittings after that term, being the 14th of May. On the 10th of May, and not ſooner, notice was given to *Henſhaw* of the information, with a ſummons to attend the hearing before the commiſſioners on the 13th, when the commiſſioners wiſhed to poſtpone giving any opinion till they had conſidered of the evidence; but the ſolicitor of exciſe preſſed to have it determined immediately, in order, as he expreſſed it, to get ſtart of the action which was to be tried on the morrow: which drove the plaintiff into a conſent to poſtpone the trial of his cauſe. And on the 16th, the commiſſioners convicted the plaintiff in the penalty of 100l (which they mitigated to 40s), beſides the forfeiture of the ſoap. And it was inſiſted on the trial of the cauſe, on the 10th of June following, firſt, that this condemnation was concluſive evidence to the jury; and ſecondly, if it was not ſo, yet that the *onus probandi*, that the ſoap had paid the duty, lay on the plaintiff. The judge permitted the condemnation, which was founded principally on the evidence of the defendants (together with others), to be read in evidence as a fact, but left it under all its circumſtances to the jury, to conſider what weight it ought to have; informing them, that this being a condemnation at the board of exciſe, and not in the exchequer, was not concluſive evidence; and that in an action of treſpaſs, the *onus probandi* of the ſoap's not having paid the duty lay upon the officers who ſeized it. Upon which the jury found a verdict for the plaintiff. It was moved for a new trial, upon this ſuppoſed miſdirection of the judge. But by *De Grey* chief juſtice and the other two juſtices: The judge's direction was right. It was determined lately in the caſe of *Scot* and *Shearman*, and has been uniformly ſo held for above a century, that a condemnation of goods in the exchequer is concluſive evidence againſt all the world. But the reaſons and authorities relied on in that and all the other caſes extend only to that court, being the king's ſupreme court of revenue, and not to the inferior juriſdictions of the boards of exciſe and cuſtoms. As to the other point, it was expreſsly determined in the caſe of *Salamen* and *Gordon*, and we have no reaſon to alter the opinion then given. And the rule for a new trial was diſcharged. *Black. Rep.* 1174.

Sworn valuers.

14. One or more juſtices ſhall have power to adminiſter an oath to any perſon ſkilled in the value of goods, veſſels, or carriages, mentioned to have been ſeized in any information exhibited before the juſtices, to view the ſame, and make

make return of the ſpecies, quantity and value; and after condemnation, the ſaid goods ſhall be ſold where the commiſſioners ſhall think proper. 12 *G. c.* 28. *ſ.* 16.

Mitigation. 15. *The juſtices, commiſſioners, or ſubcommiſſioners, reſpectively, where they ſhall ſee cauſe, may mitigate, compound or leſſen the forfeiture, penalty or fine; ſo as the ſame be not made leſs than double the value of the duty of exciſe which ought to have been paid, beſides the reaſonable coſts and charges of ſuch officers, or others as were employed therein, to be to them allowed by the ſaid juſtices.* 12 C. 2. c. 24. ſ. 46.

Mitigate.] But it is not neceſſary in the mitigation, to mention or diſtinguiſh ſo much for the offence, and ſo much for the charges; but after the juſtices have agreed what ſums to allow for the charges, the beſt way will be to add thoſe two ſums together, and make their mitigation to ſuch ſum, as both when added together do amount unto: as ſuppoſe the juſtices do intend, that the defendant ſhall pay 10l for the offence, and 40s for the charges, the beſt way will be to make their mitigation to 12l, without particularly mentioning that 10l thereof is for the offence, and that the 40s is for the charges; for in all caſes it is wrong to inſert in judgments more words or particulars than are neceſſary; and it is more particularly wrong in theſe caſes, becauſe the mentioning ſuch unneceſſary particulars may give a handle for cavils and diſputes. *Shaw.* Exc.

Appeal. 16. There is no appeal directed in the ſaid ſtatute of 12 *C.* 2. from judgments given by the juſtices of the peace; for whereas it is enacted, in the ſaid ſtatute, that *if the party find himſelf aggrieved by the judgment given by the ſubcommiſſioners, he may appeal to the next quarter ſeſſions*, theſe words, not being general, or ſuch as may be applied equally, as well to the judgments given by the juſtices, as to judgments given by ſubcommiſſioners, they muſt be underſtood as limited and reſtrained to ſuch judgments only as are given by ſubcommiſſioners, in whom the parliament (it ſeems) did not ſo intirely confide as in the juſtices, but have made the aforementioned diſtinction between the judgment of the one and of the other; which muſt be obſerved and purſued; and therefore, generally, there lies no appeal to the quarter ſeſſions from the judgment given by the juſtices, in matters relating to the exciſe. *Shaw.* Exc.

Nevertheleſs in ſome particular inſtances, ſuch power is given by ſubſequent ſtatutes; which will be mentioned under the ſpecial heads in this title hereafter following.

By the 15 *C.* 2. *c.* 11. No appeal in any cauſe of exciſe ſhall be admitted, till the appellant hath depoſited the ſingle

ſingle duty with the commiſſioners or ſubcommiſſioners, and given ſecurity to the commiſſioners of appeal, or juſtices of the peace, where the cauſe is to be finally adjudged, for ſuch forfeiture as was adjudged againſt him; and if upon appeal the judgment be reverſed, they ſhall reſtore the duty ſo depoſited, or ſo much thereof as ſhall be adjudged on the appeal, and the party originally proſecuting ſhall pay double coſts; but if the judgment be affirmed the party appealing ſhall pay the like coſts to the commiſſioners. *ſ.* 19.

And by the ſame ſtatute, all differences and appeals about the exciſe, ſhall be heard in the proper county, and not elſewhere. *ſ.* 22.

And appeals within *London*, and the limits thereof, ſhall be within two months after judgment, and notice given or left at the dwelling houſe of the party; in all other places, in four months, and not otherwiſe. *ſ.* 26.

Actions brought againſt the officers.

17. For preventing vexatious ſuits againſt the officers of exciſe and their aſſiſtants; if any information or ſuit be commenced and brought to trial, on account of the ſeizure of any goods, or of any veſſel, boat, horſe or other cattle, cart, or carriage, wherein a verdict ſhall be found for the claimer thereof, and it ſhall appear to the judge that there was a probable cauſe of ſeizure, he ſhall certify the ſame upon the record; and in ſuch caſe the claimant ſhall not be intitled to any coſts of ſuit, nor ſhall the perſon who ſeized the ſame be liable to any action, indictment, or other ſuit or proſecution on account of ſuch ſeizure: and if any action, indictment, or proſecution ſhall be commenced and brought to trial againſt any perſon on account of ſuch ſeizure, wherein a verdict ſhall be given againſt the defendant, and the judge ſhall certify on the record that there was a probable cauſe of ſeizure, the plaintiff, beſides the thing ſo ſeized or the value thereof, ſhall not be intitled to above 2d damages, nor to any coſts of ſuit, nor ſhall the defendant be fined above 1s. 23 *G.* 3. *c.* 70. *ſ.* 29.

And no writ ſhall be ſued out againſt, nor a copy of any proceſs ſerved upon any officer of exciſe or his aſſiſtant, for any thing done in the execution of his office, until one calendar month's notice in writing ſhall have been delivered to him or left at his uſual place of abode, by the attorney or agent for the party who intends to bring the action; in which notice ſhall be clearly and explicitly contained the cauſe of action, the name and place of abode of the perſon who is to bring ſuch action, and the name and place of abode of the ſaid attorney or agent: and a

fee of 20s, and no more, shall be paid for the preparing and serving such notice. *s.* 30.

And the officer may, at any time within such month, tender amends to the party complaining or to his agent or attorney; and if not accepted, he may plead such tender in bar of the action, together with the plea of Not Guilty, and any other plea with leave of the court: And if upon issue joined, the jury shall find the tender to have been sufficient, they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuited, or discontinue his action, or judgment shall be given for the defendant upon demurrer, the defendant shall be intitled to the like costs as if he had pleaded the general issue only; and if the jury find that no amends or not sufficient were tendred, and also against the defendant on such other pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, with costs of suit. *s.* 31.

And the plaintiff shall not be permitted to produce any evidence of the cause of action, except such as shall be contained in the notice. *s.* 32.

And if the officer shall neglect to tender amends, or shall have tendred insufficient, before the action brought, he may by leave of the court, at any time before issue joined, pay into court such sum as he shall see fit. *s.* 33.

And if an action shall be brought against any officer of excise or his assistant, for any thing done in the execution of his office, it shall be brought within three months next after the cause of action shall arise, and not afterwards; and shall be laid in the proper county; and the defendant may plead the general issue, and give the special matter in evidence; and if the plaintiff shall be nonsuited, or discontinue, or if upon a verdict or demurrer judgment shall be given against him, the defendant shall recover treble costs. *s.* 34.

Felonies relating to the excise where to be tried.

18. Offences relating to the excise made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, or forfeiture of lands. 19 *G.* 2. *c.* 34. *s.* 5.

Alehousekeepers harbouring offenders.

19. Any alehousekeeper harbouring an absconded person, against whom a process of arrest hath issued, for any offence against the laws of excise or of the customs, after six days notice of such absconding in two successive gazettes, and writing fixed on the door of the parish church where he last dwelt, shall forfeit 100l, and have no licence for the future. 9 *G.* 2. *c.* 35. *s.* 30, 31.

Concealing exciseable goods.

20. If any person shall conceal, or suffer to be concealed,

cealed, any goods liable to the duties of exciſe, and inland duties; he ſhall (whether he claims any intereſt in them or not) forfeit the ſame, and treble value. 11 *G.* *c.* 30. *ſ.* 16.

21. The officers, in their permits for removing exciſable goods, ſhall expreſs as well the time for which they ſhall be in force for removing ſuch goods, as the time within which they ſhall be received into ſtock by the perſon to whom they are ſent: and if not removed within the time limited (except in caſe of unavoidable accident); or, in default of ſuch removing, if the permit ſhall not be returned to the officer who granted the ſame; the perſon procuring the permit ſhall forfeit treble value of the goods; and, if not received into ſtock within the time limited, by the perſon to whom they were permitted to be ſent, they ſhall be deemed as goods removed without a permit. 21 *G.* 3. *c.* 55. *ſ.* 27, 28. Permit for removing exciſable goods.

22 If on requeſt made by any officer of exciſe, to a conſtable to go along with him, and to be preſent at the doing of any thing, at the doing whereof his preſence ſhall be neceſſary by any ſtatute, he ſhall neglect or refuſe or ſhall not go along with him, and be preſent at the doing thereof; he ſhall forfeit 20 l. 11 *G.* *c.* 30. *ſ.* 31. Conſtable to be aſſiſting.

23. If any perſon ſhall oppoſe, moleſt, hinder, or obſtruct any officer of exciſe, in the due execution of the powers given him by any act relating to the duties of exciſe; he ſhall forfeit 10 l. 6 *G.* *c.* 21. *ſ.* 7. Obſtructing officer.

And actions of aſſault upon any officer of exciſe, may be tried in any county. 9 *G.* 2. *c.* 35. *ſ.* 26.

Further penalties for obſtructing, wounding, or killing officers, in the caſe of run goods, have been inſerted before, in treating of the cuſtoms.

24. If any officer of the exciſe or cuſtoms ſhall deal in coffee, tea, brandy, or other exciſeable liquors; he ſhall be incapable to hold any office in the revenue, and forfeit 50 l. 12 *G.* *c.* 28. *ſ.* 7. Officer not to be a dealer.

25. No ſworn gager, or other officer, ſhall take any bribe, for any matter relating to the exciſe; on pain of 10 l. 15 *C.* 2. *c.* 11. *ſ.* 16. Officer taking a bribe.

And a further penalty upon ſuch officer, is inflicted, in divers inſtances hereafter mentioned.

And by the 11 *G.* *c.* 30. If any perſon liable to the duties of exciſe, or any other duties under the management of the commiſſioners of exciſe, ſhall give or offer to any officer of the ſaid duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it; he ſhall forfeit 500 l. *ſ.* 40.

26. No

Officer meddling in elections.

26. No collector, surveyor, gager, or other person concerned in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100 l, half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king. 5 *W.* *c.* 20. *s.* 48.

III. Of the several particulars under the management of the commissioners of the customs and excise: *viz.*

Ale, *beer*, *cyder*, *perry*, *mum*, *metheglin*, *mead*, *sweets*, *verjuice*, *and vinegar*; *things sold by* auction; candles; coaches; coffee, *tea*, *and chocolate*; glass; hops; leather; linen *cloth*, *silks*, *and cottons*; malt, paper; plate; salt; servants; soap; spirituous *liquors*; starch *and hair powder*; wire.

N. B. *To prevent frequent repetitions with respect to these duties in general, it is thought proper to observe in this place once for all, that by the* 19 G. 3. c. 25. *an additional custom house duty of* 5 *l per cent' is laid on the produce and amount of all imposts and duties under the management of the commissioners of the customs, upon any goods imported, exported, or carried coastwise: And an additional inland duty of* 5 *l per cent' upon the produce and amount of all imports and duties under the management of the commissioners of excise; except the duties on malt, mum, cyder, and perry, granted by the malt act of this present session of parliament, and except the duties on beer, soap, tallow, candles, and hides.*

And

And by the 21 G. 3. c. 17. *a further additional inland duty of* 5 *l per cent' upon the produce and amount of all inland impoſts and duties under the management of the commiſſioners of exciſe; except beer, malt, ſoap, candles, hides or ſkins (which word* candles *the ſtatute* 21 G. 3. c. 55. *explains to mean* tallow *candles only); and provided, that this ſhall not extend to the additional* 5 *per cent' of the* 19 G. 3.

And by the 22 G. 3. c. 66. *a further additional cuſtom houſe duty of* 5 *l per cent' is laid on the produce and amount of all impoſts and duties under the management of the commiſſioners of the cuſtoms, upon any goods imported, exported, or carried coaſtwiſe: And an additional inland duty of* 5 *l per cent' on all goods under the management of the commiſſioners of exciſe; except beer, malt, ſoap, tallow candles, hides, or ſkins; and provided that this ſhall not extend to charge the additional* 5 *per cents of the* 19 *and* 21 G. 3.

With reſpect to the ſeveral duties in particular, from the confuſion of above an hundred acts of parliament, and ſome of them of very great length, it will be found upon trial exceeding difficult to aſcertain what is the real duty; and from the alteration that is made in almoſt every ſeſſion of parliament, no certain ſtandard can be fixed which will probably be of any long continuance.

I. *Ale, beer, cyder, perry, mum, methe-glin, mead, ſweets, verjuice, vinegar.*

Duty on ale and beer imported.

1. By the ſeveral acts relating to that purpoſe, there ſhall be paid by the importer before landing, for every barrel of beer or ale imported, in the whole the ſum of 15 s.

On home ale and beer.

2. By the ſeveral acts there ſhall be paid in the whole, for every barrel of beer or ale above 6 *s* a barrel and not exceeding 11 *s* brewed by the common brewer or any other perſon who ſhall ſell or tap out beer or ale, the ſum of 3 s; above 11 s a barrel, 8 s; of 6 s a barrel or under, the ſum of 1s 4 d.

Duty on cyder and perry imported.

3. For every tun of cyder or perry imported ſhall be paid 15 *l* 10 *s*.

Duty on home cyder and perry.

4. By ſix ſeveral acts, for every hogſhead of *cyder* and *perry* made in Great Britain, and ſold by retail, there ſhall be paid by the retailer the ſum of 6*s* 8*d*. And by the annual malt act 4*s* more to be paid by the firſt buyer being a dealer or retailer. And by the 6 *G* 3. *c*. 14. ſix ſhillings more, to be paid alſo by the retailer, unleſs it be made from fruit of his own growth, and then the ſame ſhall be paid by ſuch maker.

But by the ſaid act of 6 *G*. 3. *c*. 14. If the cyder or perry ſhall be ſent or conſigned to any factor or agent who ſhall receive the ſame to ſell or diſpoſe of, then the whole 16*s* 8*d* ſhall be paid by ſuch factor or agent. *ſ*. 4.

And every perſon who ſhall receive into his cuſtody or poſſeſſion any cyder or perry, to be by him ſold or diſpoſed of, ſhall be deemed to be a factor or agent; unleſs he make proof, that ſuch cyder or perry was made from fruit of his own growth, and not from bought fruit; or unleſs it appear by certificate of the officer of exciſe accompanying the ſaid cyder or perry, that the duties have been charged upon the ſame. *ſ*. 5.

Provided, that if any cyder or perry ſhall be received by any factor or agent, dealer or retailer, for which it ſhall appear by certificate that the duties have been charged; ſuch perſon ſhall not be charged with the payment of ſuch duties charged as aforeſaid, on receiving ſuch cyder or perry into his ſtock, or on the decreaſe thereof. *ſ*. 6.

Provided alſo, that if any factor or agent ſhall (during the continuance of the preſent malt act) be charged with and pay the duty of 4*s* a hogſhead chargeable on him as the receiver thereof; he ſhall ſtand diſcharged of 4*s*, part of the ſaid 16*s* 8*d*. *ſ*. 7.

And every ſuch factor or agent, taking any cyder or perry into his poſſeſſion, ſhall, three days before he ſhall begin to diſpoſe of the ſame, make entry in writing at the next office of exciſe, of his name, at the place where the cyder or perry is to be kept: And if he ſhall make uſe of any warehouſe or other place, without having made ſuch entry; he ſhall forfeit 50l. And every ſuch factor or agent ſhall be liable to all the regulations, which any dealer in or retailer of cyder and perry is liable to by this or any other act now in force, for managing the duties on cyder and perry. *ſ*. 9.

And every perſon who ſhall buy any cyder or perry, or any fruit to make into cyder or perry, and ſhall ſell any cyder or perry ſo bought or made, by the hogſhead or any greater or leſſer meaſure; or ſhall ſell any cyder or perry

perry in leſs quantity than 20 gallons at a time, whether the ſame be made from fruit of his own growth or from bought fruit; ſhall be deemed a dealer in and retailer of cyder or perry. *ſ.* 11.

Provided nevertheleſs, that when ſuch dealer in or retailer of cyder or perry made from fruit of his own growth, ſhall ſell the ſame to any other dealer or retailer, who ſhall purchaſe the ſame to ſell again; ſuch purchaſer, receiving the ſame with a proper certificate of the duties having been charged, ſhall not be charged with the ſaid additional duty of 6*s* a hogſhead impoſed by this act on cyder and perry ſold by retail: And if the cyder or perry, made by ſuch dealer or retailer from fruit of his own growth, ſhall be ſold by the maker thereof in leſs quantity than 20 gallons at a time, ſuch dealer or retailer ſhall not be charged with the ſaid additional duty. *ſ.* 12.

And every ſuch dealer in and retailer of cyder or perry made from fruit of his own growth, ſhall be liable to all the regulations which any dealer in or retailer of cyder or perry is liable to by this or any other act now in force for managing the duties on cyder or perry. *ſ.* 13.

And for preventing diſputes that may ariſe touching charging the duties on cyder and perry; it is declared, that cyder or perry made in Great Britain, in no caſe whatſoever ſhall pay or be chargeable with more than 16*s* 8*d* a hogſhead. *ſ.* 14. (10 *G.* 3. *c.* 2. *ſ.* 22.)

And to prevent frauds being committed by dealers and retailers, or factors and agents, in ordering quantities to be removed immediately from the maker to the perſons to whom they are conſigned by ſuch dealers and retailers, factors and agents, without coming into the poſſeſſion of ſuch dealers, retailers, factors, or agents, whereby the duties are prevented from being charged; it is enacted, that if any ſuch dealer or retailer, factor or agent, ſhall cauſe ſuch cyder or perry ſo to be removed from the maker to the perſon contracting for the ſame, without the duties having been firſt charged, and without a certificate from the officer of exciſe (which he ſhall give without fee) ſignifying the quantity, or number of caſks or other package, and that the duties have been charged, he ſhall forfeit 50 l. *ſ.* 15.

Provided always, that the ſaid duties ſhall be drawn back on diſtillation into low wines and ſpirits: And if ſuch cyder or perry, having paid the duties, ſhall afterwards, by being unfit for ſale as cyder or perry, be charged with the duties on vinegar; three commiſſioners

of excise, or two justices, on proof thereof, shall discharge the duties thereon imposed by this act. *s.* 16.

Duty on mum.

5. For every barrel of mum imported shall be paid the sum of 15 *s*. And moreover by the annual malt act, for every barrel of mum made or imported, over and above all other duties, the sum of 10 *s*: To be paid by the maker or importer respectively.

Duty on metheglin and mead.

6. For every gallon of metheglin or mead, sold by retail or otherwise, shall be paid by the maker 11 *d*.

Duty on sweets.

7. For every barrel of liquor made for sale, by infusion, fermentation, or otherwise, from fruit or sugar, mixed or unmixed with other ingredients, commonly called sweets or made wines (except wines made of *British* grapes) shall be paid by the maker 12 *s*, by the 10 *G*. 2. *c*. 17. And by the 20 *G*. 3. *c*. 52. six shillings more.

Duty on verjuice.

8. By the 7 & 8 *W*. *c*. 30. *s*. 28. Verjuice made for sale shall pay as cyder and perry then paid, namely, 6 *s* 3 *d* a hogshead. And by the 8 *An*. *c*. 7. *s*. 1. five pence more.

Duty on vinegar imported.

9. For every tun of vinegar imported shall be paid 13 *l*, and if imported by strangers 30 *s* more. And by the 18 *G*. 2. *c*. 9. and 3 *G*. 3. *c*. 12; 16 *l* more for *French* vinegar, and other vinegar 8 *l*. And by the 18 *G*. 3. *c*. 27, an additional duty of 8 *l* 8 *s* 0 *d* for French vinegar, and other vinegar 4 *l* 4 *s* 0 *d*. And by the 20 *G*. 3. *c*. 30; 8 *l* more for French vinegar, and other vinegar 4 *l*.

Duty on home vinegar.

10. By the 10 & 11 *W*. *c*. 21. *s*. 9. For every barrel (at 34 gallons to the barrel) of vinegar, vinegar beer, or liquors preparing for vinegar, made for sale, shall be paid by the maker 8 *s*. And by the 8 *An*. *c*. 7. *s*. 1. nine pence more.

Note; This shall extend to vinegar made for pickles, but not to vinegar for making white lead. 8 *Ann*. *c*. 7. *s*. 4, 5.

And all stale beer, returns of beer or ale, cyder, verjuice, or any other liquors proper to be made into vinegar, which shall be found in the possession of any common vinegar maker, (except such as are to be drank in his family, and which shall be kept separate for that purpose) shall be deemed vinegar, or liquors preparing for vinegar. 10 & 11 *W*. *c*. 21. *s*. 11.

Notice and entry of vessels and places for making the same.

11. By the 15 *C*. 2. *c*. 11. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall without first giving notice at the next office of excise, or to the commissioners or subcommissioners, or one of them, erect, alter, or enlarge, any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any

any beer, ale, or worts; on pain of 50*l.* And every other perſon, in whoſe occupation any houſe, outhouſe, or other place ſhall be, where any ſuch private tun, fat, back, cooler, or copper ſhall be found, ſhall alſo forfeit 50*l.* And the ſame, together with all beer, ale, or worts therein, ſhall be taken up, ſeized, and forfeited. *ſ.* 1.

And by the 5 *G.* 3. *c.* 43. If any common brewer ſhall *alter* the poſition of any tun, batch, float, cooler, or copper, after the ſame hath been ſet up and fixed, without firſt giving notice thereof in writing to the officer; or ſhall place any boards, ſtone, wood, or any other materials at the dipping place; or ſhall by any other means prevent or hinder the gager from taking true dips and gages of beer, ale, or worts; he ſhall forfeit 20l. *ſ.* 25.

And the officer of exciſe in the day time, and in the preſence of a conſtable, where he ſhall have juſt ſuſpicion, that any private back, tun or other concealed veſſel or receptacle are uſed by any brewer, maker, or retailer of exciſable liquors, on requeſt firſt made, and cauſe declared, may break open the door, or any part of his brewhouſe, warehouſe, or other room in his poſſeſſion, and enter, and break up the ground in ſuch houſe or room, or ground near adjoining in his poſſeſſion, to ſearch for ſuch back, tun, or other veſſel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other conveyance, he may ſearch and follow the ſame, and if it ſhall lead into any ground, houſe, or place in the poſſeſſion of any other perſon, on like requeſt, and with a conſtable, he may enter the ſame, and break open the ground, or any part of the houſe if occaſion ſhall be, to follow ſuch private pipe, in order to find out ſuch concealed back, tun, or veſſel, making good the ground or houſe ſo broken up, or giving reaſonable ſatisfaction to the owner: And if any perſon ſhall oppoſe ſuch officer, he ſhall forfeit 20l. 7 & 8 *W.* *c.* 30. *ſ.* 27.

And if any *vinegar maker* ſhall without giving ſuch notice, uſe any ſtorehouſe, warehouſe, cellar, or other place for making or keeping any vinegar, vinegar beer, or liquors preparing for vinegar; he ſhall forfeit 50l. 10 & 11 *W.* *c.* 21. *ſ.* 14.

In like manner, every dealer in and retailer of *cyder* and *perry*, and other perſon receiving into his cuſtody either of them for ſale, and every perſon who ſhall buy any fruit to make into cyder or perry for ſale, ſhall make entry of his ſtorehouſes, cellars, and other places, at the exciſe office within the diſtrict; on pain of 50l. 1 *G.* 3. *c.* 3. *ſ.* 21.

So also, the maker of *sweets* for sale shall first give such notice, of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets or made wines; on pain of 20l. 10 *G.* 2. *c.* 17. *s.* 4. And any person who shall sell or use any the materials abovementioned, in making of wines, and in whose custody above two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 *W. c.* 21. *s.* 5.

Private pipes.

12. No common brewer shall keep any pipe or stop cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing vessel to another, or into any other place, nor shall have any hole in any tun, batch, or float, by which any beer, ale, or worts may be conveyed into or out of the same; on pain of 100l. 8 & 9 *W. c.* 19. *s.* 4.

And the excise officer in the day time, and in presence of a constable, on request made, and cause declared, may break up the ground in any common brewhouse, or the ground near adjoining, or any wall, partition, or other place, to search for any such private pipe, or other conveyance, and on finding may follow the same, and break up the ground, house, wall, partition, or other place, thro' or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. *s.* 5.

And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall, or other place so broken up, or make satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 50l. *s.* 6.

But any common brewer may use any pipes, stop-cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper into his publick backs or coolers; and out of the same into his tuns, batches, or floats; or out of the tun into his cask. *s.* 7.

Private cellar.

13. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying of any beer or ale, or worts, in cask; on pain of 50l: and every other person in whose occupation any such place shall be, shall also forfeit 50l. 15 *C.* 2. *c.* 11. *s.* 1. 1 *W. st.* 1. *c.* 24. *s.* 11.

Private person suffering liquors to be brewed in his house.

14. If any person inhabiting in a market town, city, or town corporate, or parts adjoining to a city or town cor-

corporate, where there is a common brewhouſe, having and lawfully uſing any private brewing veſſels for making beer or ale to be conſumed in his own private family, ſhall permit any beer, ale, or worts to be brewed in his houſe, or other place thereunto adjoining, other than for his own family, ſervants, labourers, or to others by way of charity, hoſpitality, or free gift; or ſhall lend out any of his brewing veſſels, other than which are moveable and unfixt, he ſhall forfeit 50l. 22 & 23 *C.* 2. *c.* 5. *ſ.* 10.

Gager to enter and take account.

15. The gager ſhall at all times, as well by night as by day (and if by night, then in preſence of a conſtable) be permitted upon his requeſt to enter the brewhouſe, and all other houſes and places belonging to or uſed by any perſon brewing of beer, or by any retailer of beer, ale, wort, perry, cyder, or metheglin; and to gage all coppers, fats, and veſſels in the ſame; and to take an account of all ſuch liquors brewed or made therein; and thereof ſhall make return in writing to the commiſſioners, leaving a true copy of ſuch return under his hand with ſuch brewer, maker, or retailer; which return ſhall be a charge upon ſuch brewers, makers, or retailers. 12 *C.* 2. *c.* 24. *ſ.* 33.

And if any brewer ſhall bribe the gager to make a falſe return, he ſhall forfeit 10l; and the officer taking the bribe ſhall alſo forfeit 10l. 15 *C.* 2. *c.* 11. *ſ.* 16.

And if any ſuch common brewer, maker, or retailer ſhall refuſe to permit ſuch gager to enter his brewhouſe or other place aforeſaid, or to gage or take account of his veſſels or liquor aforeſaid, he ſhall be forthwith forbidden by the gager to ſell, carry out, or deliver to any of his cuſtomers, any beer, ale, or other the liquors aforeſaid; and if he ſhall after ſuch warning given, ſell, carry, or deliver out the ſame, or any part thereof, not having paid the duty of exciſe, he ſhall beſides the forfeiture of double value, forfeit alſo the ſum of 10l. 12 *C.* 2. *c.* 24. *ſ.* 33.

And by the 7 & 8 *W.* *c.* 30. If any common brewer, innkeeper or victualler, ſhall on requeſt or demand made by the gager in the day time, or in the night in preſence of a conſtable, refuſe to permit him to come into his houſe, brewhouſe, or other place uſed by him; or being entred, ſhall refuſe him to ſtay in the brewhouſe, whilſt his guile is brewing, and quietly gage and take an account of the ſeveral worts as they are brewed off, and let into his backs and tuns, and to ſee their ſtrong and ſmall drink cleanſed and carried out without mixture, and

to take an account of the goods in the mesh tun, or the quantity of malt from which such worts are made; he shall forfeit 20l, and the prosecutor shall not be obliged to prove that the party carried out any part of such guile before he paid the duties. *s.* 22.

And by the said act, if any maker of *vinegar*, *cyder*, *metheglin*, *mead*, or *sweets* for sale, shall conceal any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or sweets from the view of the gager, he shall for every barrel of vinegar or liquor prepared for vinegar, or sweets, forfeit 40s, for every hogshead of cyder 40s, and for every gallon of metheglin or mead 5s. *s.* 16.

And if any maker or retailer of vinegar, or other the liquors last mentioned, shall on request or demand made by the gager in the day time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors; he shall forfeit 15l. *s.* 17.

And by the 6 *G.* 3. *c.* 14. If any person shall obstruct the excise officer in execution of the powers of that act, in relation to the duties on cyder and perry; he shall forfeit 40l. *s.* 17.

Indifferent gagers may be sworn.

16. As often as there shall be occasion, two able artists shall be appointed, one of them by the commissioners or subcommissioners, and the other by the brewers of any city or place; who shall be sworn before a justice, to take and compute the just contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners and subcommissioners, and another to each respective brewer. 15 *C.* 2. *c.* 11. *s.* 7.

Brewer to declare how much he intends to make.

17. Every common brewer who shall make any guile of beer or ale, shall declare to the gager, how much strong beer or ale he intends to make of such guile, and how much small, before any part of the guile is cleansed or removed out of his tuns; and if such brewer or his servants shall refuse to make such declaration, the gager shall return the whole as strong, and the brewer shall also forfeit for every barrel in such guile 20s. And if such brewer or his servants after such declaration shall make any increase of the strong beer or ale, or if the gager shall find any beer, ale, or worts of the same guile laid off, over and above the quantity so declared; he shall forfeit for every barrel so increased, laid off, or found

over and above ſuch quantity 5l, and the ſervant aſſiſting therein 20s, and in default of payment be impriſoned three months: And if on an information againſt the brewer for the ſaid penalties, it appear by his evidence, that the ſtrong beer or ale ſo declared, was increaſed by adding to or mixing with it any beer or ale that was left in the brewhouſe of a former guile, he ſhall nevertheleſs incur the penalties, except it be alſo proved upon oath that the ſttong beer or ale ſo added to ſuch guile, was added in the ſight and view of the gager. 8 & 9 *W. c.* 19. *ſ.* 2.

Mixing drink of a former brewing.

18. And whereas many brewers, having ſtrong beer or ale remaining in the brewhouſe from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the ſame new ſmall beer, or old returned drink, and then add the beer and ale ſo altered to the next guile; if it ſhall appear to the gager that the quality of ſuch ſtrong beer or ale ſo remaining in the brewhouſe of a former guile, and added to a guile of new drink, hath been ſo altered ſince it was brewed, he ſhall return all ſuch beer and ale ſo altered and added to a guile of new drink, as if the ſame were then originally brewed, and had never been charged before. 8 & 9 *W. c.* 19. *ſ.* 3.

Removing drink before the whole is brewed off.

19. If any common brewer, innkeeper, or victualler, ſhall cleanſe or remove out of his brewhouſe any part of his guile, or brewing of beer, ale, or worts, before the whole of ſuch guile is brewed off, and be in his tuns, backs, or coolers, and until the gager ſhall or might have taken an account of the ſame, without firſt giving notice to the ſuperviſor or gager, at what time, and how much of ſuch guile or brewing he intends to cleanſe or remove, and where he intends to diſpoſe of the ſame; he ſhall for every barrel forfeit 40s. 7 & 8 *W. c.* 30. *ſ.* 21.

Gager may charge for worts miſſing.

20. Where it ſhall appear to the gager, that any worts are miſſing, or not fairly let down into the tun, and the gager cannot find the ſame, he may charge for ſo much beer or ale, as ſuch worts ſo miſſing would reaſonably make. 1 *W. ſt.* 1. *c.* 24. *ſ.* 6.

Gage may be taken in warm worts.

21. Gagers may take their gages, and make their returns and charges, upon warm worts in the backs, coolers, or other veſſels; and in ſuch caſe make allowance of one tenth part thereof for waſh and waſte; which worts ſhall not be afterwards charged, when made into beer or ale. 1 *W. ſt.* 1. *c.* 24. *ſ.* 7.

Mixing ſmall beer with ſtrong.

22. If any common brewer, innkeeper, victualler, or other retailer of beer or ale, ſhall after an account hath been

been taken by the gager, convert any ſmall beer or ſmall worts into ſtrong beer or ale, by mingling the ſame, and ſhall ſell, deliver out, or retail the ſame, without giving notice to the ſame gager, of the quantity ſo mingled and converted, or if any ſuch brewer or retailer ſhall conceal or convey any beer, ale, or worts not gaged, from the ſight of the gager, whereby the king may be defrauded of the duty; he ſhall forfeit 20s a barrel. 15 *C.* 2. *c.* 11. *ſ.* 12. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 11.

And by the 2 *G.* 3. *c.* 14. If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, ſhall mix, or cauſe or ſuffer to be mixed, in any veſſel, tub, meaſure, or otherwiſe however, any ſtrong beer, ale, or ſtrong worts, with any ſmall beer or ſmall worts or with water, after the gage ſhall have been taken; he ſhall forfeit 50l. *ſ.* 2.

Time of delivering out.

23. No common brewer ſhall ſell, deliver, or carry out any beer or ale to any of his cuſtomers, either in whole caſk or by the gallon, in any city or market town, before notice given to an officer of exciſe, but between three in the morning and nine in the evening from *Mar.* 25, to *Sept.* 29; and between five in the morning and ſeven in the evening between *Sept.* 29, and *Mar.* 25; on pain of 20s a barrel. 15 *C.* 2. *c.* 11. *ſ.* 11.

And by the 10 & 11. *W. c.* 21. No *vinegar maker* ſhall receive into his cuſtody any liquors for making of vinegar, nor deliver out any vinegar in caſks or by the gallon, without notice firſt given to the officer, unleſs from *Sep.* 29, to *Mar.* 25, yearly, between ſeven in the morning and five in the evening; and from *Mar.* 25, to *Sep.* 29, between five in the morning and ſeven in the evening; on pain of 50l. *ſ.* 12.

And on receiving ſuch liquors into his cuſtody, he ſhall ſhew the ſame to the gager before he mix them with any other liquors, rape, or other materials; on pain of 20l. *id. ſ.* 13.

Mixing after delivered out.

24. If any common brewer, or innkeeper, ſhall on carrying out his drink, or after it is carried out, mix any ſmall beer or ſmall worts, with any ſtrong beer or ale on his dray, or in any victualler's cellar, or other place; he ſhall forfeit 5l: and the gager may taſte the drink upon the dray, and alſo upon requeſt may enter the cellar or other room in the poſſeſſion of any innkeeper or victualler that ſhall recive any drink from a common brewer, and taſte the drink in the ſame; and if the innkeeper or victualler ſhall refuſe him to enter into his cellar or other rooms, or to taſte the drink in the ſame, he ſhall forfeit 5l. 7 & 8 *W. c.* 30. *ſ.* 23.

25. No

Mixing by the retailer.

25. No retailer of beer or ale, ſhall after the receipt thereof from the common brewer, mix any beer, ale, or worts of extraordinary ſtrength, with any ſmall beer, ale, or worts, in any veſſel containing three gallons or more; on pain to forfeit for every barrel ſo mixt, double the duty of exciſe for ſtrong beer or ale, and ſo proportionably for any greater quantity. 22 & 23 *C.* 2. *c.* 5. *ſ.* 11.

Meaſure and allowance for leakage within the bills of mortality.

26. And for avoiding uncertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) ſhall be 36 gallons of four quarts to the gallon, according to the ſtandard in the exchequer; and the barrel of ale 32 gallons: And all other the liquors aforeſaid, ſhall be reckoned according to the wine gallon. 12 *C.* 2. *c.* 24. *ſ.* 34. 1 *W. ſt.* 1. *c.* 24. *ſ.* 5.

And the common brewer, not ſelling the ſame by retail, for waſte by filling and leakage, ſhall be allowed on every 23 barrels of beer, whether ſtrong or ſmall, three barrels; and upon every 22 barrels of ale, two barrels. 12 *C.* 2. *c.* 24. *ſ.* 36.

But if any common brewer ſhall make a falſe entry, and be convicted thereof; he ſhall, over and above other penalties, forfeit the ſaid allowance for ſix months then next enſuing. 12 *C.* 2. *c.* 24. *ſ.* 37.

In other places.

27. In all other places, 34 gallons ſhall be reckoned for a barrel of beer or ale; and the allowance for waſte ſhall be $2\frac{1}{2}$ on every 23 barrels. 1 *W. ſt.* 1. *c.* 24. *ſ.* 5.

Notes of the gage and charge to be left.

28. Notes of every *gage*, ſigned by the gagers, containing the inches and tenths of the backs, and wants of the tuns and quality of the liquors, ſhall be left by them with the common brewers of ale or beer, or ſome ſervant (if demanded) at the time of taking the gages; on pain of 40 s. 7 & 8 *W. c.* 30. *ſ.* 46.

And by the ſame act, the gager ſhall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their ſervants, a true copy under his hand of each reſpective *charge* by him made, containing the quantity and quality of the liquors by him charged in ſuch week; and if he ſhall neglect or refuſe (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) to leave ſuch copy, or ſhall charge ſuch perſon more than ſuch copy contains, he ſhall forfeit 10 l. *ſ.* 25.

Relief in caſe of overcharge.

29. The commiſſioners of exciſe or appeals, or juſtices of the peace, on complaint of any overcharge returned upon them by the gager, ſhall hear and determine the complaint; and examine witneſſes on oath, and thereupon, or by other due proof, may diſcharge ſuch complainant of ſo much of his charge as ſhall be made out before them. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 13.

30. All

Entry and payment of duties.

30. All common brewers of beer and ale, shall once in every week; and all innkeepers, alehousekeepers, victuallers and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making or retailing the same, shall once in every month, make entries at the excise office, of all such liquors, brewed, made or retailed in that week and month respectively. 12 *C.* 2. *c.* 24. *s.* 29.

And all such common brewers who do not once a week make due entries, shall forfeit 10*l.* And every such innkeeper, who doth not make true entries once a month, shall forfeit 5*l.* And every alehousekeeper, victualler, or other retailer, who does not once a month make due entries, shall forfeit 20*s.* *id. s.* 30.

And every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty: and every innkeeper, alehousekeeper, victualler, or other retailer who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty. *id. s.* 31.

Provided that no such person shall be compelled to travel for making the said entries, or payment of the said duties, or other cause whatsoever touching the same, if he live in a market town, out of the said town: if he live out of a market town, then to no other place than to the next market town to his habitation in the same county, on the market day. *id. s.* 32.

But no common brewer shall be prosecuted for any forfeiture for any misentry or short entry, if he shall in one week after the delivery of the copy of the return made by the gager, rectify his entry according to the said return, or otherwise discharge himself. 15 *C.* 2. *c.* 11. *s.* 6.

But no brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment; if it shall appear by the evidence, that he did not *bona fide* shew to the gager all the beer, ale, and worts of each respective guile, for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gager. 1 *W. sess.* 1. *c.* 24. *s.* 10.

Exception of selling in fairs.

31. But if any person shall brew, and sell by retail, any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall before such selling and retailing, pay the excise for the same: he shall be freed from all penalties relating to such entries and the like. 12 *C.* 2. *c.* 24. *s.* 39.

32. If

32. If any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10s a gallon, and also the liquor and casks. 6 *G. c.* 21. *s.* 22. Permit for removal after duty paid.

33. The commissioners and subcommissioners may compound with innkeepers and others for the duties. 12 *C.* 2. *c.* 24. *s.* 40. Compounding.

But no person who hath compounded shall, during the term of such composition, suffer any beer or ale to be brewed within his brewhouse, for any other common brewer, without first giving notice to the commissioners or subcommissioners, and forthwith paying down the excise thereof; upon pain that as well the brewer who shall brew the same, as the brewer for whom it shall be brewed, shall forfeit 5 l for every barrel. 15 *C.* 2. *c.* 11. *s.* 14.

34. All the brewing vessels and utensils for brewing, into whose hands soever they shall come, and by what conveyance or title soever they be claimed, shall be subject to all the debts and duties of excise in arrear for any beer or ale made in the said brewhouse; and shall also be subject to all penalties and forfeitures against the laws of excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do, in case the debtor or offender using the said utensils had been the real owner thereof. 15 *C.* 2. *c.* 11. *s.* 13. Utensils liable to the penalties and duties.

35. No information shall be brought against any common brewer, or alehousekeeper, vinegar maker, or cyder maker, for any misentry or offence, but within three months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling house, within a week after laying and entring the information. 1 *W. sess.* 1. *c.* 24. *s.* 16. 12 & 13 *W. c.* 11. *s.* 17. Limitation of actions.

36. If any common brewer, or maker of cyder, making beer, ale, or cyder for sale, shall deliver to any distiller or vinegar maker, any wash, tilts, ale-beer, vinegar-beer, or cyder, without first giving notice to the gager, what quantity he intends to deliver, and when, and to whom; he shall forfeit for every barrel 20s. 8 & 9 *W. c.* 19. *s.* 9. Delivering materials to distillers.

37. The master of any vessel, in which shall be shipped any *cyder* or *perry* to be carried coastwise, shall, within three days after his arrival at any port where any part thereof Carrying coastwise.

thereof is to be delivered, give to the proper officer of excise there an account in writing of the whole quantity by him received on board, distinguishing therein the names and places of abode of the persons by whom the same was put on board, and at what place; and the names and places of abode of the persons to whom the same was consigned, and where to be delivered: Which if he shall not do, or shall deliver any part thereof at sea, or in any other place than where it was consigned, (unavoidable accidents excepted;) he shall forfeit 20*l.* And he shall, within 21 days after his arrival at the place of delivery, land all the cyder and perry to be delivered there; on pain of forfeiting all such as shall not be so landed, and the same may be seized by any officer of excise, together with the casks or other package. 6 *G.* 3. *c.* 14. *s.* 8.

Exportation. 38. Ale, beer, cyder, or mum, may be exported; paying custom 1s a ton. 1 *W.* *c.* 22.

And on exportation thereof the excise shall be repaid. 22 & 23 *C.* 2. *c.* 5. *s.* 15. 7 *G. st.* 1. *c.* 20. *s.* 31. 6 *G.* 3. *c.* 14. *s.* 16.

But by the 1 *G.* 3. *c.* 7. on repayment of the excise on strong beer and ale, there shall be a deduction of 3d a tun for the charges of the officers. *s.* 5.

And when barley is at 24s a quarter or under; a bounty shall be paid to the exporter of strong beer or ale, of 1s a barrel. *s.* 6.

II. Things sold by auction.

By the 17 *G.* 3. *c.* 50. several duties were imposed on estates and goods sold by auction; which act is repealed by the 19 *G* 3. *c.* 56, so far as it concerns the licensing of auctioneers, and collecting and managing the duties: which acts, taken together, seem to enact as followeth.

Auctioneer to be licensed. 1. No person exercising the trade or business of an auctioneer or seller by commission, at any sale of any estate, goods, or effects whatsoever, by outcry, knocking down of hammer, by candle, lot, parcel, or any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser, or who shall act in such capacity, shall presume to deal in, vend, or sell, any estate, goods, or effects whatsoever, by public sale or otherwise, by way of auction as aforesaid, without taking out a licence; which, if it is within the bills of mortality, shall be granted by the commissioners of excise, or such person as they shall appoint; and elsewhere, by the collectors and supervisors, within their several collections and districts, under their hands and seals. 19 *G.* 3. *c.* 56. *s.* 3.

In

In which licence ſhall be ſet forth the true name and place of abode of the perſon taking out the ſame. *id.*

And for the ſaid licence, if it is within the limits of the chief office of exciſe in London, whether the ſame be granted for ſelling by way of auction within the ſaid limits or in any other part of England or Wales, ſhall be paid, immediately on the taking out thereof, the ſum of 20s; and elſewhere, 5s: over and beſides any other duties or payments for trading in or vending any gold or ſilver plate, or otherwiſe. *id.*

The ſaid ſum, within the bills, to be paid at the chief office of exciſe in London; elſewhere, to the collector of exciſe who granted the licence. *id.*

And if any perſon ſhall act without ſuch licence, he ſhall forfeit 100l, if it is within the bills; and elſewhere, 50l. *ſ.* 4.

And the ſaid licence ſhall be renewed annually, ten days at leaſt before the expiration of the former. *id.*

And at the ſame time that the auctioneer takes out his licence, he ſhall give bond to the king, with two ſureties, in the ſum of 200l, if it is within the bills; and elſewhere, in 50l; that he will account and make payment, as is herein after directed. *ſ.* 7.

Duty on things ſold by auction.

2. Upon every ſale by way of auction, ſhall be paid 3d for every 20s of the purchaſe money, of any intereſt, in poſſeſſion or reverſion, in any freehold, copyhold, or leaſehold lands, tenements, houſes, or hereditaments; and of any annuities or ſums of money charged thereon; and of any plate or jewels; and of any utenſils in huſbandry, and farming ſtock; ſhips and veſſels; and of any reverſionary intereſt in the public funds: And 6d for every 20s out of the purchaſe money of all furniture, fixtures, pictures, books, horſes, and carriages, and all other goods and chattels whatſoever. And ſo in proportion for any greater or leſſer ſum. 17 *G.* 3. *c.* 50. *ſ.* 4. 19 *G.* 3. *c.* 56. *ſ.* 2, 5.

Exceptions.

3. Provided, that if the real owner ſhall become the purchaſer by his own bidding, or the bidding of any other on his behalf, without fraud or colluſion, the commiſſioners or other officers ſhall make to the owner an allowance of the ſaid duties: provided notice be given to the auctioneer before ſuch bidding both by the owner and perſon intended to be the bidder, of ſuch perſon being appointed by the owner; and provided ſuch notice be verified by the oath of the auctioneer, as alſo the fairneſs of the tranſaction to the beſt of his knowledge and belief. And if any diſpute ſhall ariſe concerning the fairneſs of

the tranſaction, the proof thereof ſhall lie on the auctioneer; and on failure therein, or in caſe of any unfair practice, no ſuch allowance ſhall be made. *ſ.* 10.

Provided alſo, that nothing herein ſhall extend (1) to any ſale by auction of eſtates or chattels made by order of the court of chancery or exchequer, or courts of great ſeſſions in Wales; or (2) to any ſale made by the Eaſt India or Hudſon's-bay companies; or (3) by order of the commiſſioners of cuſtoms or exciſe; or (4) of the board of ordnance; or (5) commiſſioners of the navy or victualling offices; or (6) any ſuch ſales made by the ſheriff, for the benefit of creditors, in execution of judgments; or (7) of goods diſtrained for rent; or (8) for non-payment of tithes; or (9) of effects of bankrupts ſold by aſſignees:—Nor (10) to goods imported by way of merchandize from any Britiſh colony in America, the ſame being of the growth, produce, or manufacture of ſuch colony, on the firſt ſale thereof on account of the original importer to whom they were conſigned, and by whom they were entred at the cuſtom houſe, ſo as ſuch ſale be made within twelve months after importation; nor (11) to any ſhips or their cargoes condemned as prize, and ſold for the benefit of the captor; nor (12) to any ſhips or goods wrecked or ſtranded, ſold for the benefit of the inſurers or proprietors; nor (13) to the ſale of any goods damaged by fire and ſold for the benefit of the inſurers; nor (14) to any auction to be held on the account of the lord or lady of a manor for the granting any copyhold or cuſtomary meſſuages, lands, or tenements, for the term of a life or lives, or any number of years; nor (15) to any auction to be held for the letting or demiſing any meſſuages, lands, or tenements, for the term of a life or lives, or any number of years, to be created by the perſon on whoſe account ſuch auction ſhall be held; nor (16) to the ſale of any wood, coppice, produce of mines or quarries, or materials for working the ſame, — or to the ſale of any cattle, and live or dead ſtock, or unmanufactured produce of land,—ſo as ſuch ſale of woods, coppices, produce of mines or quarries, cattle, corn, ſtock, or produce of land, be made whilſt they continue on the lands producing the ſame, and by the owner of ſuch lands, or proprietor of or adventurer in ſuch mines or quarries, or by their ſteward or agent. 17 *G* 3. *c.* 50. *ſ.* 11, 12, 13. 19 *G.* 3. *c.* 56. *ſ.* 13, 14, 15.

Previous notice to be given of ſale.

4. The auctioneer, if it is within the limits of the chief office of exciſe in London, ſhall give two days notice at the ſaid office, elſewhere three days notice, to the collector or at the next exciſe office, in writing, ſigned by

by him, specifying the particular day when such sale shall begin; and shall, at the same time, or within 24 hours after, deliver a written or printed catalogue, attested and signed by such auctioneer or his known clerk; in which catalogue shall be particularly enumerated every article, lot, parcel, and thing intended to be sold at such auction. And if he shall presume to make sale without delivering such notice and catalogue, or sell any estate or goods not enumerated therein, he shall forfeit 20*l*. 19 *G*. 3. *c*. 56. *s*. 9.

5. The said duties of 3*d* and 6*d* in the pound, shall be a charge upon the auctioneer, immediately upon knocking down the hammer, or other closing of the bidding. 19 *G*. 3. *c*. 56. *s*. 6. Duty how to be paid.

And he shall (in pursuance of his bond entered into at the time of his licensing) within 28 days, if it is within the limits of the chief office of excise in London, elsewhere, within six weeks, deliver-in an *account* in writing of the total amount of the money bid at each sale, and of the several articles, lots, or parcels there sold, and the price of each;

And shall at the same time make *payment* of the duties: Which he may retain out of the produce of the sale, or deposit made at such sale; or otherwise recover the same, by action of debt, or on the case, against the person who employed him, or on whose account the goods were sold:

And every person so acting as auctioneer, or the person who acted as his clerk at such sale, if any, shall make *oath* to the truth of the account:

And if such auctioneer shall neglect to deliver-in his account, or to make payment, or if it shall appear that it was not a true and just account, the commissioners may put his bond in suit, unless they shall find sufficient cause to forbear the same; and in case of a verdict or judgment against him, the licence shall be void. 19 *G*. 3. *c*. 56. *s*. 7, 8.

But if such auctioneer, not being within the limits of the chief office of excise in London, shall not be prepared to deliver-in his account to the collector within whose collection the notice was delivered and such sale by auction made; he may deliver-in his said account within six weeks after every such sale at the chief office of excise in London, and at the same time deliver a true copy of the notice and of the catalogue delivered by him before to the collector: And if he shall neglect to deliver such copy of the said notice, or of the said catalogue, he shall forfeit 20*l*. *s*. 10.

Proviso with respect to fraudulent sales.

6. For the preventing of frauds, every auctioneer, who shall sell any estate or goods that have been seized by the *sheriff*, for the benefit of creditors in execution of a *judgment*, shall specify and enumerate in the catalogue, as well the particular estate and effects to be sold, as the exact sum to be levied under such execution; and the sheriff shall subscribe and sign such catalogue, and certify at the foot thereof that all the said estates and effects were really and truly the property of the person against whom such judgment was had, and that the same were actually seized in execution of the same judgment: And every auctioneer, employed by the *assignees* under a commission of *bankruptcy*, to sell the effects of any bankrupt, shall likewise specify and enumerate in the catalogue, the particular goods and effects then to be sold; and the assignees, or assignee, if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the estates and effects were really and truly the property of the said bankrupt at the time of suing out the commission. Which respective catalogue, so signed and certified, shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *sheriff* or *assignee* shall insert or suffer to be inserted in such catalogue any estate or effects, other than such as were really and truly the property of the debtor or bankrupt, or shall not certify on the catalogue the true sum to be levied, he shall forfeit 20*l*. 19 *G.* 3. *c.* 56. *s.* 16.

And every auctioneer employed to sell any goods damaged by *fire*, for the benefit of the *insurers*, shall specify and enumerate in the catalogue, the particular goods then to be sold; and the *insurers*, or the *insurer*, if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the goods in such catalogue were really and truly sold for the benefit of the insurers: Which catalogue, so signed and certified, shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *insurer* shall insert or suffer to be inserted in the catalogue any goods other than such as were really and truly to be sold for the benefit of him or them as aforesaid, or shall not certify on the catalogue the true particular of the goods to be sold, he shall forfeit 20*l*. *s.* 17.

Sale void for defect of title.

7. If the sale shall be rendred void, by reason that the person for whose benefit the estate or goods were sold had no title or right to dispose thereof, the auctioneer who

paid the duty may complain to the commissioners of excise or justices of the peace within whose jurisdiction respectively the sale was made, who may hear and determine all such complaints, and relieve the party complaining of so much as shall appear to have been overpaid. *s.* 11.

8. Finally, All fines, penalties, and forfeitures shall be sued for, recovered, or mitigated, as by the laws of excise, or sued for in the courts at Westminster; and be distributed (all necessary charges first deducted) half to the king, and half to him that shall sue. *s.* 18. Levying of fines and forfeitures.

III. Candles.

1. For every pound of tallow candles imported, shall be paid in the whole, by the several acts, 2d½. 2 *W. sess.* 2. *c.* 4. *s.* 37. 8 *An. c.* 9. *s.* 1. 9 *An. c.* 6. *s.* 11. Duty on candles imported.

For every pound of wax candles imported, 8 d. 8 *An. c.* 9. *s.* 1. 9 *An. c.* 6. *s.* 11.

2. For all candles made of wax, or usually called or sold for wax candles (notwithstanding the mixture of any other ingredients) made in *Great Britain*, shall be paid 8 d a pound. Duty on candles made in Great Britain.

All other candles 1 d a pound. 8 *An. c.* 9. *s.* 1. 9 *An. c.* 6. *s.* 11.

3. But the said duties shall not be charged on such small rush lights, as shall be made by any persons to be used in their own houses only, so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in, or once drawn thro' grease or kitchen stuff, and not thro' any tallow melted or refined. 8 *An. c.* 9. *s.* 31. Rush lights excepted.

4. During the continuance of the duties upon candles, no person shall use in the inside of his house, any lamp, wherein any oil or fat (other than oil made of fish within *Great Britain*) shall be burned for giving light; on pain of 40 s. 8 *An. c.* 9. *s.* 18. Oil not to be used instead of candles.

5. No maker of candles shall erect, set up, alter, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting of wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise; on pain of 50 l. 8 *Ann. c.* 9. *s.* 6. Places of making candles to be entered.

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting

ing houſe, workhouſe, or other place, and all private coppers, furnaces, and other veſſels, for which no entry ſhall be made, or notice given, ſhall be forfeited, or the value thereof. 8 *Ann. c.* 9. *ſ.* 17.

And by the 11 *G. c.* 30. If any maker of candles (except compounders) ſhall uſe any melting houſe, ſhop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or uſe any copper or other veſſel for melting the ſame, or any moulds or other utenſils for making of candles, without having made entry thereof in writing at the next exciſe office; he ſhall forfeit 100*l.* *ſ.* 23.

And the officer between five in the morning and eleven in the evening, with or without a conſtable, and between eleven in the evening and five in the morning, with a conſtable, ſhall be permited on requeſt to enter and ſearch; and all cheſts and other like things locked up, ſhall on his requeſt be opened; on pain that every perſon obſtructing or moleſting him, ſhall forfeit 100*l.* 11 *G. c.* 30. *ſ.* 24.

And if the officer on his ſearching any unentered houſe or place, ſhall find candles either made or making, or tallow or other materials melting or melted, or cottons or ruſhes ſpread, or any copper, mould, or other utenſil warm with tallow or other materials; this ſhall be ſufficient evidence to convict the offender in the penalty of 100*l*, for having uſed the ſame not being entred. 11 *G. c.* 30. *ſ.* 25.

And leaving a ſummons at the place where the diſcovery was made, directed to the perſon proſecuted by his right or aſſumed name, ſhall be deemed as effectual as if perſonally delivered to him, and by his proper name. *id. ſ.* 26.

Officer to enter and take account.

6. The officer ſhall at all times, by day or by night, and if in the night, then in preſence of a conſtable, be permitted on his requeſt, to enter the houſe, melting houſe, warehouſe, or other place, belonging to, or uſed by any perſon who ſhall be a maker of candles; and by weighing or tale of the candles, or otherwiſe, to take an account of the quantity; and ſhall thereof make a return in writing to the commiſſioners, or to whom they ſhall appoint; leaving a true copy of ſuch report, under his hand, with or for the maker; and if he ſhall refuſe or neglect to leave ſuch copy (on demand thereof made in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 40*s.* 8 *An. c.* 9. *ſ.* 10.

The maker to keep ſcales and weights.

7. And the maker ſhall keep juſt ſcales and weights where he makes his candles; and ſhall permit and aſſiſt the

the officer to make uſe thereof, on pain of 10l. 8 *An. c.* 9. *ſ.* 11.

And by the 10 *G.* 3. *c.* 44. if he ſhall make uſe of inſufficient ſcales or weights, he ſhall forfeit 100l: But not to be proſecuted both on this and the former act.

Notice and time of making.

8. No maker of candles for ſale, ſhall begin to make any courſe or making of candles, without notice thereof firſt given to the officer, unleſs from *Sep.* 29, to *Mar.* 25, yearly, between ſeven in the morning and five in the evening; and from *Mar.* 25, to *Sep.* 29, between five in the morning and ſeven in the evening; on pain of 10l. 10 *An. c.* 26. *ſ.* 107.

Maker to declare the number and ſizes.

9. Every maker of candles for ſale, ſhall before he begins to make or dip any making or courſe of candles, declare to the officer the number of ſticks he deſigns to make and the ſize of the candles whereof each ſtick is to conſiſt; and if ſuch making or courſe is intended to be of moulded candles, then he ſhall declare to the officer, before he begins to fill the moulds, how many moulds he intends to fill at ſuch making, and how often he intends at ſuch making to draw the moulds: and if he ſhall neglect or refuſe to make ſuch declaration, or ſhall after ſuch declaration make any increaſe of his number of ſticks, or of the ſizes of his candles, in ſuch making or courſe; or in the caſe of making mould candles, ſhall fill a greater number of moulds, or draw ſuch moulds oftner than ſhall be declared; or if he ſhall, after the weighing of any making of candles by the officer, increaſe the weight of ſuch candles, by redipping, or otherwiſe, he ſhall forfeit 10l. 10 *An. c.* 26. *ſ.* 106.

And by the 11 *G. c.* 30. If any maker of candles for ſale, ſhall begin to make any courſe of candles, not being mould candles, or make preparation for the ſame without notice in writing to the officer of ſuch his intention, and of the time of the day or night when he intends to begin, and of the number of ſticks of which ſuch making is intended to conſiſt, and of the ſizes and number on each ſtick; he ſhall in default hereof, or if he have at ſuch making more ſticks, or more candles, or larger than mentioned in the notice, forfeit 50l, and if after ſuch notice, he ſhall not begin at the time, or within three hours of it, ſuch notice ſhall be void. *ſ.* 27.

And lighting a fire under a veſſel, for melting the materials, or finding in ſuch veſſel, or in any mould, the materials melted or melting, or cottons or ruſhes ſpread or ſpreading, ſhall be deemed to be ſuch a *beginning to work*, as ſhall make him liable to the ſaid forfeiture. *ſ.* 28.

The officer ſhall charge for materials miſſing.

10. The officer ſhall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he ſhall miſs any that he had taken account of at the laſt time he was at the maker's, and ſhall not on demand receive ſatisfaction what is become thereof, the officer may charge ſuch quantity of candles, as the materials ſo miſſing in his judgment would have made, not exceeding 108 lb of candles for every 112 lb of materials miſſing, and ſo proportionably. 8 *An. c.* 9. *ſ.* 12.

And if any ſuch maker ſhall obſtruct the officer, he ſhall forfeit 20 l. *ſ.* 13.

Candles ſpoiled in making.

11 Candles cracked or ſpoiled in making, may be defaced by the officer, who ſhall make allowance for the duty. 8 *An. c.* 9. *ſ.* 29.

Removing candles before ſurveyed.

12. No maker of candles ſhall (on pain of 20 l) remove any candles, before the officer hath taken account of the ſame, without giving to the officer, within the bills, 24 hours notice; and elſewhere, two days notice, of his intention to remove the ſame. 8 *An. c.* 9. *ſ.* 14.

Candles unſurveyed to be kept ſeparate.

13. The maker ſhall keep his candles which have not been ſurveyed, ſeparate from all other candles which have been ſurveyed, for 24 hours after making, within the bills, and for two days elſewhere; unleſs they ſhall have been ſooner ſurveyed by the officer; on pain of 5 l. 8 *An. c.* 9. *ſ.* 15.

Search for candles concealed.

14. If the officer ſhall have cauſe to ſuſpect, that candles are privately making in any place; or that any candles are concealed with intent to avoid the duty; in ſuch caſe, on oath made by ſuch officer before a commiſſioner or one juſtice reſiding near to the place, ſetting forth the ground of his ſuſpicion, ſuch commiſſioner or juſtice may, if he ſhall judge it reaſonable, by ſpecial warrant authorize ſuch officer, by day or night (but if in the night, in preſence of a conſtable), to enter into every ſuch place ſuſpected, and to ſeize and carry away as forfeited all ſuch candles as he ſhall there find ſo privately making, together with all materials then ready or preparing for making the ſame, and alſo all ſuch candles as he ſhall find ſo concealed, together with the boxes or other package containing the ſame: And the perſon that ſhall be found privately making ſuch candles, or in whoſe poſſeſſion any ſuch ſhall be found, ſhall forfeit 100 l. 5 *G.* 3. *c.* 43. *ſ.* 20.

Further penalty of removing, mingling, or concealing.

15. If any maker of candles for ſale, ſhall mingle candles which have not been weighed by the officer, with thoſe which have; or ſhall fraudulently remove any before weighing; or conceal any candles or materials: he ſhall forfeit 100 l. 11 *G. c.* 30. *ſ.* 30.

16. Every

16. Every person who shall make any candles within the bills of mortality shall monthly, and elsewhere once in every six weeks, make a true entry in writing, at the next excise office, of all candles by him made within such time; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the several weeks; on pain for every neglect of entry to forfeit 20 l. Which entry shall be upon the oath of the maker or his chief workman, according to the best of their knowledge and belief; the said entries and oaths, within the bills, to be made with and administred by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. 8 *An. c.* 9. *s.* 7. Entry of candles made.

But he shall not be obliged to go further than the next market town, for making such entry. *s.* 8.

17. And the maker shall in four weeks within the bills, and elsewhere in six weeks, after such entry, pay and clear off the duties; on pain of double duty: and no maker after default in payment shall sell, deliver, or carry out any candles till he hath paid off the duty, on pain of double value. 8 *An. c.* 9. *s.* 9. Duty to be cleared off.

18. And if there shall be found in the possession of any maker of candles for sale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid; he shall be chargeable with the duties, and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours notice in writing to the officer, or at the next excise office, of his intention to buy the same, and of whom. 11 *G. c.* 30. *s.* 29. Candles not entred, nor duty paid.

19. No person shall expose to sale any candles, unless in his publick shop or warehouse, publick fair or market; on pain of 5 l. 8 *An. c.* 9. *s.* 18. Candles where to be sold.

20. The commissioners or such person as they shall appoint, and in default thereof the collector or supervisor, may compound with persons that make candles for their own private houses, for the duties at 1 s a year for every head in the family, to be paid quarterly; and such person shall not be liable to the duties. 8 *An. c.* 9. *s.* 20. Compounding.

But if any person after composition shall sell or deliver out any candles, or shall permit any other person to make candles in his house or outhouse; or shall have more persons of his family than he shall compound for, without giving notice of them in writing at the next excise office,

at or before the next quarter day, and paying the like compoſition for them, he ſhall forfeit 5l, and loſe the benefit of his compoſition, and be liable to the duties and ſurvey of the officers; and for every pound of candles ſo privately ſold or delivered out or made, ſhall forfeit 5s. *ſ.* 21.

And every ſuch compounder, who ſhall make default in continuing the ſame, ſhall in ten days make entry upon oath of all ſuch candles as he ſhall be poſſeſſed of, at the exciſe office, on pain of forfeiting 20l, and the candles of which no ſuch entry ſhall be made; and in ſix days after ſuch entry, ſhall pay the duties, on pain of double value of the candles, and his houſe and other places ſhall be liable to the ſearch of the officers. 9 *An. c.* 6. *ſ.* 14.

Candles carried coaſtwiſe.

21. Cocquets granted for ſhipping candles to be landed in any other part of the kingdom, ſhall expreſs the quality, quantity, and weight, the mark of the package, and by whom made and ſold, and where conſigned; and if they ſhall be ſhipped without ſuch cocquet, they ſhall be forfeited, and ſeized, together with the package. 23 *G.* 2. *c.* 21. *ſ.* 29.

Exportation and importation.

22. No candles ſhall be imported, otherwiſe than in ſome package, containing at leaſt 224lb of neat candles, and ſtowed openly in the hold; on pain of being ſeized and forfeited, together with the package; and the maſter of the veſſel ſhall forfeit 50l. 23 *G.* 2. *c.* 21. *ſ.* 27.

But on information brought againſt ſuch maſter, he may detain the wages of the mariners, till it be determined; and if it ſhall appear, that the candles were put on board by any mariner without the maſter's knowledge, the maſter may apply ſuch mariner's wages, in payment of the forfeiture. 26 *G.* 2. *c.* 32. *ſ.* 8.

And the officers of exciſe (in like manner as the officers of the cuſtoms) may go on board any veſſel, and ſearch for and ſeize all candles forfeited, together with the package; and they may likewiſe ſeize ſuch as before entry and payment of duties, ſhall be found unſhipping or unſhipped. 23 *G.* 2. *c.* 21. *ſ.* 28.

Candles for which the duty hath been paid, may be exported, and the duty drawn back. 8 *An. c.* 9. *ſ.* 24, 25, 26.

But no drawback ſhall be allowed, on the exportation of any foreign candles imported. 23 *G.* 2. *c.* 21. *ſ.* 36.

And the officers of exciſe or cuſtoms may ſeize any candles, with the package, that ſhall be found in any veſſel, cart, or other carriage, where they ſhall have good reaſon to believe, that the ſame were made in ſome private work-

houſe,

houſe, or clandeſtinely imported without payment of duty; or that the ſame have been exported and relanded after payment of the duty; and if the party in whoſe poſſeſſion the ſame ſhall be found, ſhall not at the hearing of the information, make it appear, that the duty hath been paid or ſecured, he ſhall forfeit 5 l for every 100 lb weight, and alſo the candles and package ſhall be forfeited. *ſ.* 30.

And if any foreign candles ſhall be unſhipped, with intention to be laid on land, before entry and payment of the duties, or ſhall be landed again after ſhipping for exportation upon debenture; the ſame, together with the package, veſſels, boats, horſes, and other carriages, uſed in landing or conveying the ſame, ſhall be forfeited, and may be ſeized by any officers of the cuſtoms or exciſe; and the perſons from whom the ſame ſhall be ſeized ſhall forfeit 5 l for every hundred weight. *ſ.* 31.

And if any perſon ſhall knowingly harbour or conceal any candles unlawfully imported, or relanded after ſhipping for exportation upon debenture; he ſhall, whether he claims any property therein or not, forfeit 50 l for every hundred weight, together with the candles and package. *ſ.* 32.

And where any ſuch candles ſhall be ſeized as forfeited, and no perſon ſhall claim the ſame in 20 days, if it is within the limits of the chief office of exciſe in *London*, the officer who made the ſeizure may cauſe notice ſigned by the ſolicitor of exciſe, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the ſame by the commiſſioners of exciſe; and if it is out of the ſaid limits, then publick notice ſhall be given by proclamation at the next market town on the market day next after the ſaid 20 days, of the day and place where the juſtices will proceed to trial and condemnation thereof. And the judgment thereon ſhall not be liable to any appeal, or to be removed by certiorari. *ſ.* 33.

Power of the juſtices.

23. All the ſaid fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and diſtributed half to the king, and half to him that ſhall inform or ſue. 8 *An. c.* 9. *ſ.* 28. 11 *G. c.* 30. *ſ.* 39. 24 *G.* 2. *c.* 40. *ſ.* 33.

Appeal.

24. And if the party is not ſatisfied with any judgment of the juſtices on the act of 23 *G.* 2. *c.* 21. before mentioned, he may appeal to the next quarter ſeſſions, except in the caſe before mentioned where no perſon ſhall claim the goods ſeized, *ſ.* 37.

Mitigation.

25. And on information of the ſaid act of 23 *G.* 2. the miti-

mitigation shall not reduce the penalty to less than a fourth part, over and above the costs and charges to be allowed. *s.* 38.

Proof to lie on the owner.

26. And where candles shall be seized for nonpayment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *s.* 35.

Utensils liable to the duties and penalties.

27. All candles, materials, and utensils for making of candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures; in the same manner as if the debtor or offender were the lawful owner. 8 *An.* *c.* 9. *s.* 19.

IV. Coaches.

Duty on coaches.

1. By the 20 *G.* 2. *c.* 10. for every coach, berlin, landau, chariot, calash with four wheels, chaise marine, chaise with four wheels, and caravan, kept by any person for his own use, or to be let out to hire shall be paid 4 l yearly (and by the 16 *G.* 3. *c.* 34. an additional sum of 20 s and by the 22 *G.* 3. *c.* 68. a further sum of 20 *s*): And for every calash, chaise, and chair with two wheels, kept by any person for his own use, or to be let out to hire; shall be paid 40 s yearly (and by the 22 *G.* 3. *c.* 68. a further sum of 20 s, if kept by any person for his own use).

And by the 16 *G.* 3. *c.* 34. for every coach, berlin, landau, chariot, calash with four wheels, chaise marine, chaise with four wheels, and caravan, kept as publick stage coaches, employed in carrying passengers for hire, shall be paid yearly the sum of 5 l.

But this shall not extend to *licensed hackney coaches*, within *London* and *Westminster* and the suburbs thereof, not employed in carrying persons more than ten miles from the said cities. *s.* 11.

Nor to *coaches kept for sale:* But no such carriage shall, whilst in possession of the coachmaker or other person, be employed for his own use, or for the use of any other person (other than such whose carriage shall be then and there mending), or be let out to hire; on pain of 20 l. *s.* 12.

Nor to any *post chaise* kept for hire by the postmaster general, or any deputy postmaster: But such post chaises shall in 30 days after letting out the same, be entred by the owners at the next office of excise; and shall (besides the

the king's arms) have ſuch mark of diſtinction fixed thereon, as ſhall be appointed by the commiſſioners; on pain of 20 l. *ſ.* 8, 9.

And the commiſſioners ſhall cauſe a mark of diſtinction to be fixed on every ſuch carriage, that ſhall be let out to hire; and if any perſon ſhall let out to hire any ſuch carriage without ſuch figure fixed thereon, or ſhall take off the ſame when fixed; he ſhall forfeit 20 l. *ſ.* 10.

Entry and payment of the duties.

2. Every perſon who ſhall keep ſuch coach or other carriage, ſhall in 20 days after he ſhall begin to keep the ſame, and within 20 days yearly after the expiration of 12 calendar months after the time of giving ſuch firſt notice; give notice in writing, at the chief office of exciſe in *London* (if within the bills); and elſewhere, ſhall give notice at the next office of exciſe,—of his keeping the ſame, and the number, and whether with four or two wheels, and where he reſides; and at the ſame time pay down the duties; on pain of 20 l. *ſ.* 4, 5.

But if the duties are paid, and entry made, before information brought, the parties ſhall not be proſecuted, tho' it be not ſtrictly within the time limited. *ſ.* 15.

And the ſaid entry and payment ſhall be regiſtred by the proper officer, and a receipt given for the duty, of which receipt the officer ſhall keep an indented duplicate. *ſ.* 6.

Perſons dying before the end of the year.

3. Where a perſon ſhall die before the end of the year, the perſon claiming title to the coach, may uſe it, as the deceaſed might have done. *ſ.* 16.

Power of the juſtices.

4. All the ſaid rates and duties, and all forfeitures and offences, ſhall be determined by the commiſſioners of exciſe (or of appeals, in caſe of appeal), within the limits of the chief office in *London*; and elſewhere, by two juſtices near; who ſhall, on complaint upon oath, ſummon the party, and on his appearance or contempt, may examine the fact, and on proof thereof either by confeſſion, or oath of one witneſs, give judgment, and iſſue warrants for levying penalties by diſtreſs and ſale (if not redeemed in 14 days); which ſhall be employed (all neceſſary charges firſt deducted) half to the uſe of the king, and half to the informer: And for want of ſufficient diſtreſs, they may impriſon the party till ſatisfaction is made. *ſ.* 13, 14.

[But as theſe duties chiefly affect the nobility and perſons of diſtinction, it had been better if the act had been more explicit with reſpect to the puniſhment; otherwiſe it may not be ſo ſafe for juſtices of the peace, upon ſuch vague and general words, to impriſon a peer of the realm, or diſtrain the goods of a member of parliament.]

5. Perſons

Appeal. 5. Persons aggrieved by the determination of the justices, may appeal to the next quarter sessions. *s.* 13.

V. Coffee, tea, and chocolate.

Duty on coffee. 1. For all coffee imported, shall be paid at the custom house, in the whole, the sum of 3d a pound. 10 *G. c.* 10. *s.* 48, 49.

And an inland duty, to be paid by the maker or seller, of 2s 6d a pound. 10 *G. c.* 10. *s.* 4, 6. 5 *G.* 3. *c.* 45. *s.* 12.

Except coffee of the growth of the *British* plantations in *America*; which shall pay only 1s 6d a pound. 5 *G.* 2. *c.* 24. *s.* 1.

Duty on tea. 2. No tea shall be imported, but from the place of its growth; on pain of forfeiture. 11 *G. c.* 30. *s.* 8.

And by the 18 *G.* 2. *c.* 26. Over and above the customs on importation, there shall be paid on all tea, an inland duty of 1s a pound, and 25l for every 100l of the gross price at which it shall be sold at the *East India* company's sales; which shall be paid in ready money by the proprietor to the collector, before it be taken out of the warehouse. *s.* 2.

In order to which, the commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the 25l *per cent.* shall be ascertained; and to prevent mistakes, the said officers may inspect the company's books. 18 *G.* 2. *c.* 26. *s.* 6.

And every person declared the best bidder at such sale, shall within three days after, deposit with the company or their clerk 40s for every tub and chest of tea, on pain of six times the value, and such sale shall be void, and the same shall in 14 days after be put up again. 18 *G.* 2. *c.* 26. *s.* 7. And by the 13 *G.* 3. *c.* 44. the deposit for every tub and chest of bohea tea shall be 4l. *s.* 2.

And by the said act of 13 *G.* 3. *c.* 44. The commissioners of the treasury may grant licence to the *East India* company to take out of the warehouse (without the same having been put up to sale) and to export to any of the *British* plantations in *America*, or to foreign parts, such quantities of tea as they shall think proper, discharged from the payment of any duties or customs whatsoever. Provided, that no such licence shall be granted, unless it be made appear to the said commissioners that there will be left remaining in the warehouses a quantity of tea not less than ten millions of pounds weight. *s.* 3, 4, 5, 6.

3. No

3. No chocolate ready made, or cocoa paſte, ſhall be imported, on pain of forfeiting the ſame, and double value; and alſo the bags, caſks, and other package. 10 *G.* *c.* 10. *ſ.* 2. Duty on cocoa nuts and chocolate.

For cocoa nuts imported, ſhall be paid at the cuſtom houſe in the whole, 10s a hundred weight. 10 *G.* *c.* 10. *ſ.* 47, 49.

And if any perſon ſhall import any cocoa nut ſhells or huſks, without the nuts, the officers of the cuſtoms, exciſe, or inland duties, may ſeize them, with the bags, boxes, and package; and after condemnation they ſhall be deſtroyed or otherwiſe diſpoſed of, as the reſpective commiſſioners, or three of them ſhall appoint; and they may reward ſuch officer in any ſum not exceeding 20s a hundred weight. 4 *G.* 2. *c.* 14. *ſ.* 12.

And inſtead of the former duties upon chocolate made or ſold in *Great Britain*, ſhall be paid an additional inland duty of 18d a pound on cocoa nuts imported. 21 *G.* 3. *c.* 55. *ſ.* 2.

4. No *coffee* ſhall be imported otherwiſe than in caſk, cheſt, caſe, bag, or other package, which ſhall contain 112lb at the leaſt, to be ſtowed openly in the hold; on pain of forfeiting the ſame, together with the package; which may be ſeized by any officer of the cuſtoms or exciſe. 5 *G.* 3. *c.* 43. *ſ.* 34. In what quantities to be ſtowed.

5. The exciſe officers may go on board any ſhips, and ſearch as the officers of the cuſtoms may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paſte, and ſeize all ſuch as ſhall be forfeited, or ſhall be unſhipped without entry and payment of duties, with the boxes, bags, and other package. 11 *G.* *c.* 30. *ſ.* 1. Officers of exciſe may go on board and ſearch.

6. By the 9 *G.* 2. *c.* 35. Where any veſſel coming from foreign parts, and having ſix pounds or more of tea on board, ſhall be found at anchor, or hovering within two leagues of the ſhore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all ſuch tea, with the cheſts and other package, or the value thereof, ſhall be forfeited (whether bulk ſhall have been broken or not), and the ſame may be ſeized and proſecuted, or the value thereof ſued for by the officers. *ſ.* 22. Ships hovering near the coaſt.

And by the 5 *G.* 3. *c.* 43. Where any veſſel coming from foreign parts, and having on board twenty pounds of coffee, ſhall be found at anchor, or hovering within two leagues of the ſhore; or ſhall be diſcovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all ſuch coffee, together

together with the package, or the value thereof, ſhall be forfeited, whether bulk ſhall have been broken or not; and the veſſel alſo with her tackle and furniture ſhall be forfeited, provided ſuch veſſel doth not exceed the burthen of 50 tons.

The ſaid goods to be entred and warehouſed.

7. The importer of any coffee, tea, or cocoa nuts, within 30 days after the maſter or purſer ſhall have or ought to have made entry at the cuſtom houſe, of the burthen, contents, and lading of the veſſel, ſhall make due entry of the ſaid coffee, tea, or cocoa nuts, with an officer of exciſe to be appointed by the commiſſioners for that purpoſe; and the ſame, on paying or ſecuring the duties ſhall be landed and put into a warehouſe, to be provided at the charge of the importer, and approved of by the commiſſioners of the cuſtoms. 10 *G. c.* 10. *ſ.* 26. 5 *G.* 3. *c.* 43. *ſ.* 35.

And if any perſon ſhall import any coffee, tea, or cocoa nuts, without entry at the cuſtom houſe, and bringing the ſame into the warehouſe; the ſame ſhall be deemed clandeſtinely run, and may be ſeized by any officer of the cuſtoms or inland duties; and the ſame ſhall be forfeited with the package, together with the horſes, carts, and carriages. 10 *G. c.* 10. *ſ.* 27.

And if any perſon ſhall neglect or refuſe to make ſuch entry with the officer of exciſe as aforeſaid, or to land the ſame as is above directed; all ſuch coffee, tea, and cocoa nuts ſhall be forfeited, together with the package wherein the ſame ſhall be contained on board ſuch veſſel, belonging to ſuch importer ſo neglecting or refuſing; which may be ſeized by any officer of exciſe. 5 *G.* 3. *c.* 43. *ſ.* 35.

Provided, that this ſhall not extend to any coffee or tea imported by the Eaſt India company. *ſ.* 36.

Owner and officer to have each a lock and key.

8. And the owner of the ſaid goods, and the officer for the inland duties, (who ſhall be appointed by the commiſſioners of the ſaid duties) ſhall have each a lock and key; and the owner may in preſence of the ſaid officer, and of the warehouſe keeper (to be appointed by the commiſſioners of the cuſtoms) view, garble, and ſort the ſaid goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 *G. c.* 10. *ſ.* 26, 29, 30.

Taking out of the warehouſe coffee and tea for home conſumption.

9. That is to ſay, If the coffee or tea are intended to be taken out for home conſumption, the proprietor, within the bills, ſhall make entry with the receiver or collector in *London*, of ſo much as he intends to take out of the warehouſe, and pay down the duty; and elſewhere ſhall make

make entry at the next office, and pay the duties to the collector; and on producing a certificate signed by such collector or receiver (certifying that he has received the duty) to the warehousekeeper, he shall deliver out so much as is mentioned in the certificate; and shall deliver a permit to accompany such coffee or tea so delivered out, which shall also be signed by an officer attending the warehouse, to prevent the seizing thereof. 10 *G. c.* 10. *s.* 26.

Taking out of the warehouse coffee and tea for exportation.

10. If the coffee or tea are intended to be taken out for exportation; they shall be delivered out on security given that they shall be exported, and not relanded; which security shall be discharged, on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants there; that the same were there landed, or on proof by credible persons that they were taken by enemies, or perished in the seas. 10 *G. c.* 10. *s.* 26.

But by the 18 *G.* 2. *c.* 26. No drawback shall be allowed on tea exported. *s.* 5. Saving that it may be exported to *Ireland*, or the *British* plantations in *America*, without paying the inland duties before mentioned. 21 *G.* 2. *c.* 14. And by the 17 *G.* 3. *c.* 27. the whole duties on importation shall be drawn back for all teas exported to *Ireland*.

Taking out of the warehouse cocoa nuts either for home consumption or exportation.

11. The cocoa nuts shall not be taken out of the warehouse, but upon payment of the inland duties aforesaid: That is to say, the proprietor, within the bills, shall make entry with the collector there, of the quantity he intends to take out, and pay down the duty; and elsewhere, shall make entry at the next excise office, and pay the duty. And on producing a certificate signed by such collector (certifying that he has received the said inland duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate, and shall give a permit to accompany the cocoa nuts so delivered out, which shall also be signed by the officer attending the warehouse, to prevent the seizing thereof. And the garble of all such cocoa nuts, when garbled and secured in the warehouse, shall by order of the commissioners of excise be removed out of the warehouse by the officers attending the same, and forthwith burned or otherwise destroyed. 21 *G.* 3. *c.* 55. *s.* 10, 11.

And the cocoa nuts for which the duty has been paid, or the chocolate made of such cocoa nuts, may be exported, on security given that they shall not be relanded. And on oath made by the exporter that the said duties have

have been paid, the excise officer at the port of exportation shall give a certificate of the quantity, and that the same was shipped in his presence, and that such security has been given; whereupon the collector of excise of that district shall pay back four fifths of the said inland duty. *s.* 12—15.

What quantity shall be taken out at a time.

12. And no seller or dealer shall receive out of the warehouse, less than one hundred weight of each sort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than a hundred weight. 10 *G. c.* 10. *s.* 34.

Warehouse keeper and officer to keep an account.

13. And the warehouse keeper and officer appointed by the commissioners of the inland duties shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouse, and the day and time when, and how much was delivered for home consumption, and how much for exportation, and the names of those for whom it was delivered out; and shall every six weeks, or oftner if required, transmit an account thereof in writing and on oath to the respective commissioners, with an account how much is remaining in the warehouse: Which said commissioners shall in one month appoint a person to inspect the books and warehouses, and examine the accounts; and if it shall appear that any was otherwise delivered out, or before payment of the duties on such coffee and tea as were sold for home consumption, or giving security for what was delivered for exportation, the warehousekeeper and officer respectively offending shall forfeit 100 l, and be disabled to hold any publick office. 10 *G. c.* 10. *s.* 29.

Damaged coffee or cocoa nuts.

14. And whereas damaged coffee and cocoa nuts have frequently been imported and sold for salvage, or on other accounts, and afterwards taken by dealers into their stocks, whereby great frauds have been committed; therefore no damaged coffee, which cannot be sold for 1 s 6 d a pound, nor cocoa nuts for 1 s a pound, shall be sold on any account to be consumed in this kingdom, but shall be secured in warehouses, and not taken out till security be given for the exportation thereof. 21 *G.* 3. *c.* 55. *s.* 17.

Allowance to the officer for seizing.

15. Where any officer of excise shall have seized as forfeited any coffee, chocolate, cocoa nuts or cocoa paste, the commissioners shall allow him one third of the clear sum that shall arise from the sale thereof after condemnation. Provided, that if at public sale the same be sold

[*Note*,

[*Note, the ſenſe ſeems to require that the word* "not" *ought to have been inſerted, ſo as that the ſentence ſhould have run*, "if at public ſale the ſame be *not* be ſold"] for 1 s a pound, the ſame ſhall not in any wiſe be ſold, but ſhall be burned or otherwiſe deſtroyed; and the officer ſhall be rewarded as the commiſſioners ſhall think fit, not exceeding 6d for each pound ſo burned or deſtroyed. 21 *G.* 3. *c.* 55. *ſ.* 18, 19.

But no officer of the cuſtoms, or other perſon, ſhall be intitled to any reward for any ſeizure of the ſaid goods, unleſs he give notice of the ſeizure to the next officer of exciſe, or ſupervifor, in 48 hours; who ſhall, on ſuch notice, take an account of the ſpecies and quantity; nor ſhall ſuch goods be removed without a permit from ſuch officer of exciſe, on pain of reſeizure. 12 *G.* *c.* 28. *ſ.* 6.

16. Every perſon who ſhall keep a public houſe, ſhop, cellar, or other warehouſe, for ſelling of brandy or other ſpirituous liquors, and ſhall have in his cuſtody any coffee, tea, chocolate, or cocoa nuts, above ſix pounds weight, ſhall be deemed a dealer in the ſaid commodities. 11 *G.* *c.* 30. *ſ.* 4. Who ſhall be a dealer in coffee, tea, and chocolate.

17. If the officer of exciſe ſhall find any increaſe of the ſtock of any dealer, over and above what the officer found in his laſt ſurvey; ſuch increaſe ſhall be deemed to be made by a commodity for which no duty has been paid; and ſo much of the ſaid ſtock as ſhall be found to be ſo increaſed ſhall be forfeited, and the perſon in whoſe ſtock the increaſe ſhall be found ſhall alſo forfeit 20l. 21 *G.* 3. *c.* 55. *ſ.* 29. Dealer fraudulently increaſing his ſtock.

18. No tea whatever ſhall at any time be removed, with or without a permit, from any place not being within the limits of the bills of mortality, to any place within the ſaid limits; and no tea, exceeding twenty pounds weight (not being in the original cheſt in which it was imported) ſhall at one time be removed, whether with or without a permit, from any place not being within the ſaid limits to any other place out of the ſaid limits; not being within the town, pariſh, or place from whence removed; on pain that the ſame, together with the caniſters, bags, and other package, veſſels and boats, horſes and other cattle and carriages, ſhall be forfeited, and may be ſeized by any officer of exciſe. Provided, that this ſhall not extend to prevent any dealer from taking out two or more permits, and by virtue thereof ſending two or more packages of twenty pounds each to the ſame perſon in the ſame day by different conveyances. 21 *G.* 3. *c.* 55. *ſ.* 20, 21, 22. 22 *G.* 3. *c.* 68. *ſ.* 21, 2, 3. 23 *G.* 3. *c.* 70. *ſ.* 28. Limitation of quantities of tea to be removed at one time.

Tea ſeized to be ſent to London.

19. All tea ſeized any where in England ſhall, before it be ſold, be ſent to London, and depoſited in the warehouſe appointed by the commiſſioners, in order to be there ſold; the exciſe officer ſending therewith a permit, ſpecifying that the ſame is ſeized or condemned as forfeited, as the caſe ſhall be. 21 *G.* 3. *c.* 55. *ſ.* 23.

Dealer returning tea.

20. If any dealer, having received any tea into his ſtock, ſhall ſee cauſe to return the ſame, he ſhall give notice to the officer of exciſe, who ſhall grant a permit for returning the ſame; and if he ſhall return the ſame without a permit, or be guilty of any fraud relating thereto, he ſhall forfeit 100l. 21 *G.* 3. *c.* 55. *ſ.* 24.

Officers may take ſamples.

21. When any dealer in tea ſhall have taken out a permit for removing tea from his own ſtock to the ſtock of any other like dealer, the officer may take a ſample (not exceeding two ounces nor leſs than one, to be ſealed by the trader in preſence of the officer) out of each parcel ſo intended to be removed, paying for the ſame according to the price that ſuch tea is then commonly ſold for: And if ſuch dealer ſhall refuſe to permit the officer to take ſuch ſample, or ſhall deliver a ſample not being the very tea ſo to be ſent away, he ſhall forfeit 20l. 21 *G.* 3. *c.* 55. *ſ.* 25.

Tea carried in the night.

22. If any tea, exceeding ſix pounds weight, ſhall be found carrying in any part of the kingdom, unleſs from Sep. 29 to March 25 between 7 in the morning and 5 in the evening, and from March 25 to Sep. 29 between 5 in the morning and 7 in the evening (except the ſame be carrying by a known common ſtage coach or other ſtage cariage, which uſually travel out of thoſe hours); the ſaid tea together with the package, whether with or without a permit, and all cattle and carriages made uſe of in carrying the ſame, ſhall be forfeited and may be ſeized by any officer for the inland duties on tea. 21 *G.* 3. *c.* 55. *ſ.* 26.

Licence for retailing.

23. By the 15 *G.* 2. *c.* 11. No perſon ſhall be permitted to ſell or retail any coffee, chocolate, ſherbet, or tea, without licence firſt had by order of the general ſeſſions of the peace in the reſpective counties (certificate being firſt ſhewed, that he hath given good ſecurity for payment of the duties to the king); or from the chief magiſtrate of the place in whoſe juriſdiction he ſhall inhabit. And no licence ſhall be granted to any retailer, till ſuch ſecurity ſhall be given by recognizance or otherwiſe: For which licence, recognizance, and ſecurity, 12d ſhall be given, and no more, for the payment of the exciſe. And perſons ſelling without ſuch licence and ſecurity, ſhall forfeit 5l a month.

But

But by the 20 *G.* 3. *c.* 35. No perſon ſhall trade in or ſell any coffee, tea, or chocolate, without firſt taking out a licence for that purpoſe; for which he ſhall pay the ſum of 5s. The ſame to be granted, if within the limits of the chief office of exciſe in London, under the hands and ſeals of two commiſſioners, or of ſuch perſons as they ſhall appoint; elſewhere, under the hands and ſeals of the collectors and ſupervifors of exciſe reſpectively. Such licence to be renewed annually, ten days at leaſt before the expiration of the former. And if any perſon ſhall trade in or ſell any coffee, tea, or chocolate, without ſuch licence, he ſhall forfeit 20l.—Provided, that perſons in partnerſhip, and carrying on the buſineſs of ſelling coffee, tea, or chocolate, in one houſe or ſhop only, ſhall not be obliged to take out more than one licence: and that no licence ſhall impower any perſon to ſell the ſame, in any other houſe or place, than that wherein he ſhall dwell at the time of granting ſuch licence.

Houſes of manufacturing and ſale to be entred.

24. Every druggiſt, grocer, chandler, coffee-houſe keeper, chocolate-houſe keeper, and other perſon ſelling or dealing in coffee, tea, and cocoa nuts, or making or ſelling chocolate, either by wholeſale or retail, ſhall before he take any the ſaid goods into his poſſeſſion make entry in writing of all ſtorehouſes, ſhops, rooms, and other places intended to be uſed by him, at the office for the diviſion; on pain of forfeiting 200l, and the ſaid goods found therein, with the caniſters, bags, veſſels, and other package. 10 *G.* *c.* 10. *ſ.* 10.

And no entry of any ſhop, warehouſe, room, or utenſil for carrying on any trades aforeſaid, ſhall be deemed a legal entry, unleſs made in the name of the real owner of, and trader in ſuch ſhop; and the perſon who acts as viſible owner of ſuch place, or principal manager in ſuch trade, ſhall be deemed the real owner and trader, and conſequently liable for any ſtock found there, or for not making entries, or other offences. 18 *G.* 2. *c.* 26. *ſ.* 8.

And none of the ſaid goods ſhall be offered to ſale but in places entred, or in a warehouſe to be approved of by the commiſſioners; on pain of forfeiting the ſame and alſo 10l. 10 *G.* *c.* 10. *ſ.* 14. 12 *G.* 3. *c.* 46. *ſ.* 6.

Houſes to be marked.

25. Every druggiſt, grocer, chandler, coffee-houſe keeper, chocolate-houſe keeper, and every other perſon ſelling or dealing in coffee, tea, cocoa nuts, or chocolate, ſhall cauſe to be painted or written in large legible characters, over the door of each place, the words *dealer in coffee*, *tea*, *cocoa nuts*, or *chocolate*; on pain of 200l. 19 *G.* 3. *c.* 69. *ſ.* 18.

And if any dealer in tea, coffee, cocoa nuts, or chocolate ſhall buy any of the ſaid goods, of any perſon not having the words aforeſaid painted over the door of his ſhop or other place; he ſhall forfeit 100l.——Provided, that ſuch dealer ſhall not be ſubject to the ſaid penalty, by reaſon of any purchaſe or transfer of any tea, coffee, or cocoa nuts, whilſt they remain in the warehouſes according to the act of 10 *G. c.* 10. nor by reaſon of any purchaſe at any ſale of the *Eaſt India* company; or of the commiſſioners of the cuſtoms or exciſe; or ſold for the benefit of the inſurers or proprietors to defray the charges of ſalvage; nor by reaſon of any firſt purchaſe of any prize teas. *ſ.* 19, 20.

And if any perſon, other than ſuch as have made due entry at the exciſe office of their ſeveral places for keeping any of the ſaid goods, ſhall paint over his door the words aforeſaid; he ſhall forfeit 50l, over and above the penalties for ſelling or dealing without entry. *ſ.* 21.

And if any perſon, not being ſuch dealer, ſhall buy any of the ſaid goods (except as before excepted) not having the aforementioned words painted over his door, he ſhall forfeit 10l: And if the ſeller ſhall, within 20 days, and before any information has been lodged againſt him, inform againſt the buyer, he ſhall be diſcharged from all penalties to which he might be liable for ſuch his own offence. *ſ.* 22.

Notice of bringing in.

26. No coffee, tea, cocoa nuts, or chocolate ſhall be brought into any ſuch ſhop or other place, without firſt giving notice thereof to the officer of the diviſion, and leaving with him a certificate ſigned by the officer of the diviſion from whence they were brought, that the duties on ſuch coffee, tea, and chocolate have been paid, or that they have been condemned as forfeited; and in caſe of bringing in of cocoa nuts, that they have been entred with the officers of the cuſtoms, or were condemned as forfeited; and expreſſing the quantity and quality, and where the duties were paid, or at what port the cuſtoms and duties were paid for the cocoa nuts, or were condemned; on pain of forfeiting the ſame and treble value, with the caniſters, bags, and other package. 10 *G. c.* 10. *ſ.* 11.

Permit when ſold to the retailer.

27. And where any of them ſhall be ſold in the ſaid entred places, above the weight of 6lb, the officer ſhall, on requeſt of the ſeller, give to the buyer a certificate ſigned by him, expreſſing the quantity, and the names of the buyer and ſeller, and that the duties have been paid, or

or that the cocoa nuts have been entred with the officers of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 *G. c.* 10. *s.* 15.

Officers to enter and survey.

28. The officers shall be permitted at all times by day, to enter all warehouses, shops, and other places, and by weighing, gaging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales; on pain of 100 l. 10 *G. c.* 10. *s.* 12. 10 *G.* 3. *c.* 44. *s.* 1.

Search for goods concealed.

29. And if any officer shall have cause to suspect, that any the said goods shall be concealed, if it is within the bills, then on oath made before two commissioners, or elsewhere, before one or more justices, setting forth the ground of his suspicion, they may by warrant authorize such officer by day or night, but if in the night then in presence of a constable, to enter the place suspected, and seize and carry away the same (if found) as forfeited, together with the bags, canisters, and other package; and if any person shall obstruct such officer, he shall forfeit 100 l. 10 *G. c.* 10. *s.* 13.

And if any seller or dealer shall conceal any the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package; and if any person shall obstruct the officer in seizing any of the said goods by virtue of this or any future act, or after seizure shall endeavour to rescue the same, or break or damage the vessels or package; he shall forfeit 50 l. *s.* 39, 40.

And by the 11 *G. c.* 30. Two commissioners or any justice of peace, on complaint by an officer on oath, that he suspects any dealer not to have made true entries, setting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall refuse or neglect to appear, or to make such oath, he shall forfeit 20 l. *s.* 12.

T. 13 *G.* 3. *Bostock* against *Saunders* and others. Trespass for breaking and entring his house. On not guilty and issue thereon, the cause was tried before the lord chief justice at the sittings after Hilary term, and a verdict for the plaintiff with 100 l damages, subject to the opinion of the court on the following case. The plaintiff proved his declaration. The defendants in their defence produced and proved a warrant under the hands and seals of two commissioners of excise, reciting, that the defendant Saunders had made oath before them, that he had cause to suspect, and did suspect that tea was fraudulently hid

and concealed in the plaintiff's houſe, to defraud the king of his duties, ſetting forth in and by the ſaid oath the ground of his ſuſpicion, and the ſame appearing to them to be reaſonable ground of ſuſpicion, they therefore judge it reaſonable, and do authorize and impower him to enter the plaintiff's houſe, and to ſeize all tea and other exciſable goods which he ſhall there find fraudulently concealed; and all conſtables and other officers are authorized and required to be aiding and aſſiſting therein. On which was indorſed this return: "Honourable Sirs, I have ſearched the houſe of *H. Boſtock*, but without ſucceſs." But the defendants did not produce or prove the information ſtated in the warrant to have been made on oath before the commiſſioners. It was proved that the defendant *Saunders* was an officer of exciſe, and that the other defendants, who acted as his aſſiſtants, were two of them officers of exciſe, and one an officer of the cuſtoms. The queſtion was, Whether upon theſe circumſtances the plaintiff was entitled to recover? The caſe was argued two ſeveral terms.—By *De Grey* chief juſtice: This queſtion was very fit to be ſolemnly argued, becauſe it was never yet determined. It ariſes on the ſtatute of 10 *G. c.* 10. which gives the officers of exciſe an unlimited power of ſearching all entred places in the day time; but if there be cauſe to ſuſpect any unentred place, then, on oath made of ſuch ſuſpicion, two commiſſioners or a juſtice may empower the officer to ſearch. The officer therefore ſtands in a double character, as procurer, and as executor of the warrant. It is ſaid, that the officer is juſtified in executing this warrant, as much as a ſheriff's officer in executing thoſe iſſued by the ſheriff. But the law conſiders the exciſe officer as the party promoting, acting for his own intereſt, and not bound to obey the warrant, if, after he has received it, he finds his own ſuſpicions ill founded. Therefore he is not like a ſheriff's officer. Nor is he like a proſecutor, when a bill is found by a grand jury; becauſe there muſt be ſome fact, and not merely a ground of ſuſpicion found upon oath by that jury. The queſtion therefore is, whether the officer is not liable, if he procures and executes a warrant without good grounds of ſuſpicion. There may be good ground of ſuſpicion, without an actual ſeizure of the goods. But the ſuſpicion muſt be very well founded, to juſtify entring an houſe without the owner's conſent. In the preſent caſe, the commiſſioners have no general power of inveſtigating the grounds of the information. But they are bound to act on the oath of the informer. They have no power to ſummon evi-

evidence or even the ſuſpected party. Indeed that would defeat all purpoſes of ſearching, for upon ſuch notice the goods would be ſure to be removed. This differs it from the proviſion of 11 *G. c.* 30. where the commiſſioners are to ſummon the party, on information or ſuſpicion of falſe entries, becauſe in ſuch caſe the goods are not removable. There is no occaſion to ſay, whether the commiſſioners are or are not liable for improper exerciſe of their judgment. The obliging the warrant to be directed to the informer, points out to the party injured, where his remedy certainly lies. And I think in this caſe, the plaintiff is intitled to recover.—*Gould* juſtice of the ſame opinion. I ſhould think, if no information could be produced, or only a frivolous one, the commiſſioners ſigning the warrant would themſelves be alſo liable to an action; but that is not the preſent caſe.—*Blackſtone* juſtice of the ſame opinion. I think the inſtrument ſigned by the commiſſioners is improperly called a warrant. It is rather a licence, authority, or permit; and was interpoſed by the legiſlature thro' a tender regard to the liberty of the ſubject. Houſes, that are entred as dealing in the exciſable commodities, are liable to be ſearched in the day time, at the officer's diſcretion; but no other houſes are liable to be ſearched at all (nor even thoſe, in the night time) without good cauſe of ſuſpicion proved upon oath to the commiſſioners or juſtices, in whom the law repoſes a confidence that they will not wantonly authorize the officers to enter the houſes of the ſubject. But ſtill, if the ſuſpicion, tho' plauſible, appears to be ill founded; the officer, who, by a falſe or miſtaken ſuggeſtion, hath obtained ſuch licence from the commiſſioners, ſhall perſonally anſwer for the injury. *Black. Rep.* 912

True manufacturing of coffee.

30. No perſon ſhall mix with coffee, to increaſe the weight, any butter, greaſe, water, or other materials, on pain of 100l; and if any dealer ſhall knowingly buy or ſell any ſo mixed, he ſhall forfeit 100l. 11 *G. c.* 30. *ſ.* 9.

And the commiſſioners may appoint houſes and proper materials for roaſting of coffee berries, and officers to attend them, and one perſon at each houſe well ſkilled in roaſting of coffee; to which all perſons may reſort to have their coffee berries roaſted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roaſting of which coffee ſhall be paid 8 s a hundred weight. 10 *G. c.* 10. *ſ.* 31.

But the ſellers and dealers may, if they think proper, ſend their own roaſters; who ſhall be permitted to roaſt the ſame, paying 3 s a hundred weight. 10 *G. c.* 10. *ſ.* 32.

And during the continuance of such roasting houses, no coffee berries shall be roasted, burned, or dried, but in one such house; on pain of forfeiting the same, and 5s a pound. 10 *G. c.* 10. *s.* 33.

And if any officer or roaster shall neglect or refuse to attend such house, he shall forfeit 10l for the first offence, and 20l for the second, and be incapable to hold any office in the revenue. 10 *G. c.* 10. *s.* 34.

True manufacturing of tea.

31. No dealer in tea, or manufacturer, or dyer thereof, shall adulterate it, or alter, or manufacture it with any drug, or mix it with any leaf or other ingredient; on pain of forfeiting the same, and 100l. 11 *G. c.* 30. *s.* 5.

And by the 4 *G.* 2. *c.* 14. If any dealer in or seller of tea shall dye, or manufacture, any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea, or shall mix or colour such leaves of tea, with *terra japonica*, sugar, molasses, clay, logwood, or any other ingredients; or shall offer to sale, or have in his custody any such leaves in imitation of tea, or any such stained leaves of tea mixed with any ingredient, he shall forfeit for every pound weight thereof 10l. *s.* 11.

And by the 17 *G.* 3. *c.* 29. If any person, whether he be a dealer in or seller of tea or not, shall dye or manufacture any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of any ash, elder, or other tree, shrub, or plant, in imitation of tea, or shall mix or colour any such leaves with *terra japonica*, copperas, sugar, molasses, clay, logwood, or any other ingredients, or shall sell or offer to sale, or have in his custody any such leaves dyed or manufactured, or dying or manufacturing, in imitation of tea, and shall be thereof convicted upon the oath of one witness before one justice, he shall, for every pound of such leaves so dyed or manufactured or dying or manufacturing in imitation of tea, and for every pound of such mixed stained or dyed leaves of tea, forfeit 5l; and on non-payment thereof, such justice shall commit him to the common gaol for any time not exceeding twelve months nor less than six, or until the penalty and charges shall be said, *s.* 1.

And if any person shall have in his custody any quantity (exceeding six pounds weight) of sloe leaves, or the leaves of ash, elder, or any other tree, shrub, or plant, green or manufactured, and shall not prove, to the satisfaction of the justice before whom the matter shall be heard, that such leaves were gathered with the consent of the owner of the trees, shrubs, or plants, from which the

the leaves were taken, and that such leaves were gathered for some other use and not for the purpose of manufacturing them in imitation of tea, and shall be convicted thereof by the oath of one witness before one justice, he shall, for every pound of such green or manufactured leaves so found in his custody, forfeit the sum of 5l; and on non-payment thereof, the justice shall commit him to the common gaol for any time not exceeding twelve months nor less than six, or until the penalty and charges shall be paid. *s.* 2.

And if any excise officer or other person shall have cause to suspect that any such leaves dyed or manufactured or dying or manufacturing in imitation of tea, or intended so to be dyed or manufactured, shall be concealed or lodged in any place; in such case, on oath made before a justice, setting forth the ground of his suspicion, the justice may, if he judge it reasonable, by his warrant authorize such officer or other person, by day or night, but if in the night then in presence of a constable, to enter such place, and to seize and carry away as forfeited all such leaves, together with all the waggons, carts, boxes, bags, tubs, or other vessels, or package, containing the same: And the said justice, or any other justice, where such seizure shall be made, shall, on proof of the premisses by the oath of one witness, by his warrant order the leaves so seized to be carried to some convenient place, and there to be burned or otherwise destroyed; and shall order the said waggons, carts, boxes, bags, tubs, or other vessels or package, containing the same, to be forthwith sold, and the money arising by such sale, after deducting the charges of seizure and sale, and of the burning or otherwise destroying the leaves, to be paid half to the informer, and half to the poor: And if any person shall obstruct such officer, he shall forfeit 50l, on conviction by the oath of one witness before one justice; and on non-payment, the justice shall commit him to the common gaol for any time not exceeding twelve months nor less than six, or until the penalty and charges shall be paid. *s.* 3.

Provided that no such green and unmanufactured leaves shall be burned or otherwise destroyed, if the owner thereof shall, within 24 hours after seizure, prove to the satisfaction of the justice, that the said leaves were gathered with consent of the owner of the trees, shrubs, or plants, and that they were gathered for some other use and not for the purpose of manufacturing them in imitation of tea; in which case the said leaves, carriages, and package shall by order of such justice be restored. *s.* 4.

And

And all such leaves shall be deemed in the custody of the occupier of the house or place where the same shall be found, and such occupier shall be liable to all the penalties by this act inflicted on persons having such leaves in possession, if it shall be proved to the satisfaction of the justice that such leaves were lodged there with the privity or consent of the said occupier. *s.* 5.

The said forfeitures shall be distributed one half to the informer, and the other half to the poor of the parish or place where the offence shall be committed; in which case, nevertheless, an inhabitant may be a witness, notwithstanding his being interested. *s.* 6, 7.

The conviction shall be written on parchment or paper, in this or the like form: *Be it remembred, that on the—— day of—— in the year* —— A. O. *was, upon complaint of* A. I. *convicted before me one of the justices of the peace for —— in pursuance of an act passed in the seventeenth year of the reign of his majesty king* George *the third for* [Here set forth the offence] *Given under my hand and seal the day and year abovewritten:* And shall be certified by the justice to the next sessions; and shall not be quashed for want of form, nor removed by *certiorari* into his majesty's court of king's bench. *s.* 9.

True manufacturing and stamping of chocolate.

32. The maker of chocolate, if within the bills, shall weekly, and elsewhere every six weeks, make entry in writing at the next office, of all chocolate made by him within that time, setting forth the weight thereof, on pain of 50 l. Which entry shall be upon oath of the maker or his chief workman, according to the best of his knowledge and belief, to be administred within the bills by such officers as the commissioners shall appoint, and elsewhere by the collectors and supervisors. But no person shall be obliged to go further to make entry, than the next market town. 10 *G. c.* 10. *s.* 17.

And he shall in one week within the bills, and elsewhere in six weeks after entry, clear off the duties, on pain of 50 l, besides the duty; and he shall, after default in payment, sell or deliver none out till the duty is paid, on pain of treble value. 10 *G. c.* 10. *s.* 18.

And he shall at the time and place of entry produce the same so made (on pain of 20 s for every pound not produced); which chocolate shall be tied up with thread in papers of one pound, half a pound, or a quarter of a pound each, and not more or less; which shall be marked or stamped by the officers. 32 *G.* 2. *c.* 10. *s.* 16.

And if any person shall sell chocolate in any less quantity than a quarter of a pound; or shall sell and deliver

any chocolate not being duly marked or ſtamped; or not incloſed and tied up with the identical piece of thread directed to be uſed in tying up the ſame before it was ſtamped; or ſhall ſell and deliver any chocolate, whereof the thread and ſtamped label incloſing the ſame ſhall have been broken or opened; he ſhall forfeit 20l. *ſ.* 17.

And if any perſon ſhall counterfeit the ſaid ſtamp, or ſhall knowingly ſell any chocolate with a counterfeit ſtamp; or ſhall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the ſtamp on; he ſhall forfeit 500 l, and be committed to the next county gaol for twelve months. 10 *G. c.* 10. *ſ.* 22. 11 *G. c.* 30. *ſ.* 13.

And if any ſtamped chocolate ſhall be damaged, the owner may in preſence of an officer open it, and deliver the ſtamps to the officer, and work it over again with freſh cocoa nuts, and have it reſtamped, paying duty for what is added. 11 *G. c.* 30. *ſ.* 14.

But on reworking chocolate, proof ſhall be made (before the commiſſioners within the bills, and before two juſtices elſewhere) that the duties for the cocoa-nuts whereof it was made, and for thoſe alſo which are added, have been paid, and the chocolate entred. 11 *G. c.* 30. *ſ.* 15.

Chocolate made for private families.

33. If any perſon ſhall be minded to make chocolate for his own family, and not for ſale, and ſhall give notice thereof under his hand to the officer of the diviſion, three days before he begin to make, in which notice ſhall be ſpecified the quantity of cocoa nuts deſigned to be made into chocolate, the name of the perſon to be employed in the making, and the place where; in ſuch caſe the officer ſhall give a permiſſion under his hand for making the ſame, and the place ſhall not be liable in reſpect thereof to be ſurveyed. 10 *G. c.* 10. *ſ.* 23.

And the perſon for whom it is made, ſhall in three days after finiſhing, make entry on oath with the officer, of the whole quantity then made by virtue of ſuch permit, and bring the ſame wrapt up as before, to have it ſtamped, and ſhall pay the duty; and in default thereof, ſhall forfeit the ſame, and treble value. *ſ.* 24.

And no perſon ſhall be permitted to make into chocolate for his own private uſe, leſs than half a hundred weight of cocoa nuts at a time. *ſ.* 25.

Penalty of retailing the ſame without a permit, or pedlars with one.

34. And if any perſon ſhall offer any tea to ſale, not having a permit; or if any pedlar, or other trading perſon, going from town to town, or other mens houſes, and trading either on foot, or with any horſe or other cattle, or

or otherwiſe, ſhall offer any ſuch tea to ſale, altho' he have a permit; the perſon to whom it is offered to ſale, may ſeize and detain the ſame and carry it to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice of the peace to be by him committed to priſon, and proſecuted for the penalties incurred for ſuch offence; and ſuch tea may be proſecuted in the name of the perſon who ſtopped or ſeized the ſame, in like manner as if it had been ſeized by an officer. 9 *G.* 2. *c.* 35. *ſ.* 20.

And none of the ſaid goods above ſix pounds weight, ſhall be removed or carried from one part of the kingdom to another, without a permit ſigned by an officer, ſignifying the names and places of abode of the buyer and ſeller, and the quantity and ſpecies of the goods, and that the duty hath been paid, or the cocoa nuts entred as aforeſaid, or that they have been condemned as forfeited; on pain of forfeiting the ſame, together with the caniſters, bags, or other package: Which permit ſhall be left with the officer of the diviſion to which the ſame ſhall be carried, to prevent the ſeizure thereof; in which permit ſhall be expreſſed the time for which it ſhall contine in force. 10 *G. c.* 10. *ſ.* 16.

And for the better diſtinguiſhing the ſpecies of the tea to be contained in the ſaid permit, all dealers in and ſellers of tea, who ſhall receive into their cuſtody any Bohea, Congo, Souchong, or Pekoe tea, ſhall mark every caniſter, bag, jar, tub, box, caſk, or other package containing the ſame, with the word *Black*; and ſhall mark every caniſter, bag, or other package in which they ſhall keep any other kind of tea, not being Bohea, Congo, Souchong, or Pekoe tea, with the word *Green*. And for avoiding all doubts concerning the ſaid two kinds of tea diſtinguiſhed by the names of *Black tea* and *Green tea*, it is hereby declared, that by the term *Black tea* is meant all ſuch teas as are uſually known by the name of Bohea, Congo, Souchong, or Pekoe tea; and that by the term *Green tea* is meant all teas not being ſuch Bohea, Congo, Souchong, or Pekoe tea. And the permit granted by ſuch officer ſhall diſtinguiſh the ſame accordingly. 12 *G.* 3. *c.* 46. *ſ.* 1, 2, 5.

And the officer of exciſe who ſhall ſurvey and take account of the ſtock of tea at the warehouſes, ſtorehouſes, ſhops, cellars, or other places, of perſons being dealers in and ſellers of tea, ſhall keep a ſeparate and diſtinct account of the Black tea and Green tea; and if he ſhall find any increaſe either of Black tea or Green tea in cuſtody of any

any ſuch dealer or ſeller, the ſame ſhall be taken to be made by tea for which no duty hath been paid, and privately brought in without a permit: And ſo much of either of the ſaid ſorts as ſhall be found to be ſo increaſed ſhall be forfeited, and ſeized by the officer, unleſs the owner ſhall make it appear that the increaſe was made by tea brought in with a permit or certificate of the payment of the duties thereof. *Id. ſ.* 3.

And if any perſon ſhall take out a permit for removing coffee, tea, or cocoa nuts, and ſhall not ſend away the goods within the time limited, nor return the permit, he ſhall forfeit treble value; and if there ſhall not appear a ſufficient decreaſe made in the ſtock to anſwer the quantity in the permit, the officer may ſeize ſo much of the ſaid ſtock as forfeited, as will anſwer the ſaid quantity in the permit: But no perſon ſhall receive a permit, without the direction in writing of the perſon (or his ſervant) from whoſe ſtock the goods are to be removed; on pain of 50 l: And in default of payment, he ſhall be impriſoned three months. 11 *G. c.* 30. *ſ.* 10.

Account to be kept of ſmall quantities conſumed.

35. All ſellers and dealers in any the ſaid goods, and all makers of chocolate, and coffee or chocolate-houſe keepers, who ſhall conſume the ſame in ſmall quantities under ſix pounds, ſhall keep an account of all coffee, tea, chocolate, and cocoa nuts which they ſhall conſume in each day; and every night enter in a book an account of the groſs quantities retailed by them under ſix pounds; and ſhall keep another book wherein they ſhall enter each parcel above ſix pounds, which they ſhall ſell in each day, which ſhall not be removed without a permit from the officer, expreſſing the quantity and quality, and the name of the ſeller and buyer, and where it is to be carried, and that the duties were paid, or the cocoa nuts entred, or that they were condemned as forfeited; which books ſhall be prepared by the commiſſioners, and by them delivered on demand to ſuch ſellers and dealers; and when the books ſhall be filled up, they ſhall be returned to the officer upon oath of the truth of the entries; and the ſaid book ſhall from time to time lie open, and be peruſed by the officer: And if ſuch ſeller or dealer ſhall omit his duty in regard to the ſaid books, he ſhall forfeit 100 l. 10 *G. c.* 10. *ſ.* 35.

(But by the 12 *G. c.* 28. No dealer in cocoa nuts ſhall diſpoſe of leſs than 28 pounds at a time, and then ſhall enter in writing the name and place of abode of the perſon to whom ſold, and on demand ſhall produce ſuch account to the officer; on pain of 20 l for each pound of cocoa nuts otherwiſe diſpoſed of, and of 20 l for default about the entry. *ſ.* 29.)

And

And such dealers in and sellers of tea shall in their accounts and books to be kept as aforesaid, distinguish particularly the respective quantities of each of the said sorts of Black tea and Green tea by them consumed, retailed, or sold on each day; on the like pain of 100 l as aforesaid. 12 *G.* 3. *c.* 46. *f.* 4.

Power of the justices.

36. All the said penalties and forfeitures (except where herein otherwise directed) shall be recovered and mitigated as by the laws of excise or in the courts at *Westminster*; and be employed half to the use of the king, and half to the informer. 10 *G.* *c.* 10. *f.* 41. 11 *G.* *c.* 30. *f.* 39. 4 *G.* 2. *c.* 14. *f.* 10. 18 *G.* 2. *c.* 26. *f.* 14. 24 *G.* 2. *c.* 40. *f.* 33.

And by the 12 *G.* *c.* 28. the penalties on the said act shall be recovered as by the laws of the customs or excise respectively. *f.* 33.

Proof to lie on the claimer.

37. And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. 10 *G.* *c.* 10. *f.* 28.

Condemnation and sale.

38. The commissioners shall cause all tea and coffee seized in *London*, and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London*. 12 *G.* *c.* 28. *f.* 1. Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper. *f.* 16.

But if they think fit, they may cause such tea as cannot be sold for 5 s a pound, to be burnt or otherwise destroyed; and the person making seizure, to be rewarded as they shall think proper, not exceeding 1 s 6 d for each pound of such tea. *f.* 3.

Utensils liable.

39. All stock and utensils found in the shops or other places aforesaid, shall be liable to the duties and forfeitures. 18 *G.* 2. *c.* 26. *f.* 8.

VI. Glass.

Duty on importation.

1. By the 17 *G.* 3. *c.* 39. Certain additional duties are laid upon glass imported, over and above what it shall pay by the 2 *W.* *sess.* 2. *c.* 4. and by the book of rates of the 12 *C.* 2. which shall be under the management of the commissioners of the customs. *f.* 24.

And if any foreign glass shall be landed or unshipped with intent to be put on shore, before entry and payment of the duties, or without a warrant from the proper officer; the same shall be forfeited, or the value thereof, and may be seized or recovered of the importer or proprietor, by any officer of the customs or excise; and moreover the master or other person having command of the

the vessel, and every other person concerned in such landing or unshipping, shall forfeit 100 l. *Id. s.* 25.

2. Moreover, there shall be paid a home duty, upon all materials, metal, or other preparations for making of *plate* or *flint* glass, and of all *enamel*, *stained*, or *paste* glass, and of all *phial* glass, commonly called apothecary or other phials, the sum of 18 s 8 d a hundred weight; ——for making of *spread window* glass, commonly called *broad* glass, 7 s;——for making of all other window glass, whether flashed or otherwise manufactured, commonly called *crown glass*, 14 s;——for making of glass commonly called *German sheet* glass, 14 s;——for making of common *bottles* (not being phials), and of vessels made use of in chymical laboratories, and of garden glasses, and of all other vessels or utensils made of common bottle metal, 3 s 6 d: To be paid by the maker; and to be under the management of the commissioners of excise. 17 *G.* 3. *c.* 39. *s.* 26, 29. Home duty.

3. In order whereunto, every maker of glass shall first make entry in writing at the next excise office, of his name, and of all his furnaces, pots, pot chambers, warehouses, rooms, and other places for making or keeping of glass, or of materials for making it; and if he shall use the same, without first giving notice to the proper officer, he shall forfeit 50 l. 19 *G.* 2. *c.* 12. *s.* 10. 17 *G.* 3. *c.* 39. *s.* 27. Place of making to be entred.

4. And he shall, before he begin to fill any pot, give 12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glass to be made; on pain of 50 l. And if the filling be not begun pursuant to such notice, the said notice shall be void. 19 *G.* 2. *c.* 12. *s.* 11, 12. 17 *G.* 3. *c.* 39. *s.* 33. Notice of beginning to work.

And if, after notice given, and a gauge taken by the officer, he shall put into any pot any material or preparation, he shall forfeit 50 l. 17 *G.* 3. *c.* 39. *s.* 33.

5. The officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glass; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glass maker; and if he shall not leave such copy on demand, he shall forfeit 40 s. 19 *G.* 2. *c.* 12. *s.* 13. Officer to enter and survey.

6. And the maker shall keep just scales and weights at the place where the glass is made, and assist the officer in weighing; on pain of 50 l. 19 *G.* 2. *c.* 12. *s.* 14. Maker to keep scales and weights.

And

And by the 10 *G.* 3. *c.* 44. if he shall make use of insufficient scales or weights, he shall forfeit 100 l: but not to be prosecuted both on this and the former act.

Officer may take samples.

7. And the gauger or other officer may take samples, not exceeding four ounces in the whole, out of each pot; paying for the same (if demanded) one halfpenny for each ounce: And if any person shall obstruct the officer in taking samples, he shall forfeit 50 l. 17 *G.* 3. *c.* 39. *s.* 34.

Entry of glass made.

8. Every maker within the bills shall monthly, and elsewhere, once in six weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 20 l: which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. 19 *G.* 2. *c.* 12. *s.* 17.

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making such entries. *s.* 18.

Payment of the duty.

9. The maker, within the bills, shall in four weeks, and elsewhere in six weeks after entry, pay off the duties on pain of double duty. 19 *G.* 2. *c.* 12. *s.* 19.

Allowance for glass spoiled in making, and for waste.

10. If any pot filled with materials shall crack or break, whereby any part thereof shall become unfit for service, on proof thereof to the commissioners where such glass house shall be situated, they shall make an allowance for the same. 19 *G.* 2. *c.* 12. *s.* 15.

And in recompence of waste necessarily happening in manufacturing the materials, and for metal left at the bottom of the pot which cannot conveniently be wrought out; in all pots containing more than one hundred weight used for preparing materials for making of flint, enamel, stained glass, and of all phial glass, an allowance shall be made to the maker of one fourth part of the materials contained therein, and of one inch deep at the bottom of the pot;——in small pots, commonly called *Pile ends*, not containing one hundred weight, an allowance shall be made of one fifth only of the materials;—— in pots used for making of crown and plate glass, and of all window glass, whether flashed or spread, or otherwise manufactured, an allowance shall be made of one fourth of the materials, and of 4 inches deep at the bottom;——and in pots used for making of common bottles (not being phials), and of other vessels and utensils to be made of common bottle metal, an allowance shall be made of one fifth of the materials, and three inches deep at the bottom of the pot. And if the maker shall be desirous to work up any of the bottoms for which an allowance

lowance hath been made of three inches or of four inches at the bottom as aforesaid, he shall give six hours notice thereof in writing to the officer of excise; in which case he shall be charged with a duty for the same of 18s 8d a hundred weight, and shall have an allowance of one inch and no more at the bottom of the pot: And if he shall work any part thereof without giving such notice, he shall forfeit 50l. 17 *G.* 3. *c.* 39. *s.* 31, 2.

Exportation.

11. Any person who hath paid the duty may export the glass, and have the duty drawn back; and if it shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation, and moreover every person concerned therein shall forfeit 100l. 19 *G.* 2. *c.* 12. *s.* 20, 1, 2. 17 *G.* 3. *c.* 39. *s.* 35, 6, 7. 20 *G.* 3. *c.* 6.

And no glass shall be imported into *Ireland*, other than the manufacture of *Great Britain*; on pain of forfeiting the same, and the ship, and 10s a pound. 19 *G.* 2. *c.* 12. *s.* 23.

Power of the justices.

12. The penalties to be recovered or mitigated as by the laws of excise, or in the courts at *Westminster*; and to be employed, half to the use of the king, and half to him that shall sue. 19 *G.* 2. *c.* 12. *s.* 39. 17 *G.* 3. *c.* 39. *s.* 41.

But no person concerned in the glass trade, or in any glass house, shall act as a justice in any matter relating to these duties. 17 *G.* 3. *c.* 39. *s.* 38.

VII. Hops.

Duty on hops imported.

1. By the 9 *An.* *c.* 12. an additional duty of 3d a pound is laid on all hops imported, over and above all other duties; which shall be under the management of the officers of the customs. *s.* 1, 2, 3, 4.

And if any foreign hops shall be landed before entry and duty paid, or without warrant for landing; the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 5l a hundred weight. 7 *G.* 2. *c.* 19. *s.* 1.

Duty on hops grown in Great Britain.

2. And by the said act of the 9 *An.* *c.* 12. there shall be paid a duty of 1d for every pound of hops grown in *Great Britain*, cured and made fit for use; the same to be paid by the owner within six months after they shall be cured and put in bags; which duty shall be under the management of the commissioners and officers of excise. *s.* 1, 5.

Hop grounds to be entred.

3. In order whereunto, every person who shall plant or have growing any hops, for sale or not for sale, shall yearly on or before *Aug.* 1, give or send notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township, or place, and the name of the owner or occupier; on pain of 40s an acre. 9 *An. c.* 12. *s.* 6.

But such person shall not be obliged, for giving notice, to go further than the next market town. *s.* 7.

And the officer who shall receive the notice, shall in five days enter the same in a book to be kept at the office for that purpose; on pain of 40s. *s.* 7.

Places of curing and keeping to be entred.

4. Also no person shall use any oust, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice thereof shall have been given, on pain of 50l. 9 *An. c.* 12. *s.* 8.

And all hops shall in six weeks after gathering, be brought to be cured and bagged at such ousts or places notified, and no other; on pain of 5s a pound. *s.* 9.

Officers to enter and survey.

5. The officer shall at all times, by day or night, and if in the night in the presence of a constable, be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping of hops; and if the planter or owner shall obstruct him, he shall forfeit 20l. 9 *An. c.* 12. *s.* 15.

Notice of bagging and weighing.

6. The owners of hops, before they respectively begin to bag or weigh their hops, shall send notices in writing under their hands to the next excise office or officer, of the day and hour when they intend to begin either to bag or to weigh: which notice, as to such as shall be bagged or weighed the first week, shall be given 24 hours before; and as to every other bagging or weighing, 48 hours; on pain of 50l. 6 *G. c.* 21. *s.* 25.

And by the 14 *G.* 3. *c.* 68. the officer shall, on pain of 5l, weigh the bags or pockets; and shall, before the hops shall be put therein, mark on the outside of each bag or pocket the true weight or tare thereof, and also the planter's name and place of abode, together with the date of the year in which such hops were grown: And if he shall put his mark of the weight of the hops upon any bag, before he hath weighed such bags and hops therein, he shall forfeit 40s, on conviction before one justice, by confession, or oath of one witness, by distress; half to the informer, and half to the overseers for the use of the poor. *s.* 12.

And if any person shall forge, alter, or obliterate any such mark on such bag or pocket, he shall forfeit 10l in like

like manner; and in default of payment, ſhall be impriſoned ſix months, or until he ſhall have paid the penalty. *ſ.* 3.

Provided, that no perſon ſhall be proſecuted on this act, unleſs complaint ſhall be made within ſix calendar months after the ſale of any ſuch hops. *ſ.* 4.

Officer to attend.

7. And the officer ſhall cauſe an entry of the ſaid weight to be made in his book; and ſhall make return thereof in writing to the commiſſioners or to whom they ſhall appoint, leaving a true copy (if demanded) of ſuch return under his hand with the planter or owner; and if he ſhall neglect or refuſe to leave ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 5*l.* 9 *An. c.* 12. *ſ.* 11.

Owner to keep ſcales and weights.

8. The owners ſhall keep at their ouſts, ſtorehouſes, and places of keeping their hops, weights and ſcales; and permit the officer to uſe them; and ſhall not ſuffer any falſe weights to be uſed; on pain of 20*l.* 6 *G. c.* 21. *ſ.* 26.

And by the 10 *G.* 3. *c.* 44. a penalty of 100*l* is inflicted for falſe ſcales or weights, but the offender not to be proſecuted on both acts.

Hops may be put into caſks inſtead of bags.

9. The owners may, if they think fit, put the hops into caſks, inſtead of bags; giving the like notice, and being ſubject to the ſame regulations, for caſking as for bagging. 6 *G. c.* 21. *ſ.* 27, 28.

And the officer ſhall cauſe the caſk to be weighed, and the weight to be marked on the caſk, and alſo the weight of the hops therein. *ſ.* 28.

Deceit in bagging.

10. No perſon ſhall take any hops of foreign growth out of the bags in which they are imported, and rebag the ſame in *Britiſh* bagging, in order to ſell or export them as *Britiſh* hops; on pain of 10*l* a hundred weight: And if any perſon ſhall endeavour to defraud the king of the duty, by uſing twice or oftner the ſame bag, with the officer's mark thereupon; he ſhall forfeit 40*l.* 9 *An. c.* 21. *ſ.* 23.

Removal before bagging.

11. No planter or owner ſhall (on pain of 50*l*) remove from his ouſt, ſtorehouſe, or other place, any hops, until they have been cured, bagged, and weighed, and the duties aſcertained; unleſs where the officer after notice, ſhall not attend the bagging and weighing. 9 *An. c.* 12. *ſ.* 16.

Concealing.

12. If any planter or owner ſhall conceal any hops, to avoid the duties; he ſhall forfeit 20*l*, and the hops concealed. 9 *An. c.* 12. *ſ.* 17.

Privately conveying

13. And if any gatherer of hops, or other perſon, ſhall privately convey any hops from the place of growing, or

where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit 5s a pound. 9 *An. c.* 12. *s.* 18.

Payment of the duties.

14. The planter or owner shall in six months after the hops shall be cured, bagged, or weighed, pay off the duties; on pain of double duty, two thirds to the king, and one third to the informer. 9 *An. c.* 12. *s.* 14.

Adulterating hops.

15. If any person shall mix with hops any drug or ingredient to alter the colour or scent; he shall forfeit 5l a hundred weight. 7 *G.* 2. *c.* 19. *s.* 2.

Using other things instead of hops.

16. No common brewer, innkeeper, or victualler shall use any broom, wormwood, or any other bitter ingredient, to serve instead of hops; on pain of 20l. (Except the infusion of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 *An. c.* 12. *s.* 24.

Exportation.

17. Hops which have paid the duty, may be exported, and the duties shall be drawn back. 9 *An. c.* 12. *s.* 21. 20 *G.* 3. *c.* 18.

Penalties how to be recovered.

18. The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of excise, and distributed half to the king, and half to him that shall sue. 9 *An. c.* 12. *s.* 26. 24 *G.* 2. *c.* 40. *s.* 33.

Hops liable to distress for the duties and penalties.

19. And all hops in the custody of any planter or owner, or person in trust for him, shall be liable to the duties in arrear, and to the penalties; in the same manner as if the debtor or offender were the lawful owner. 9 *An. c.* 12. *s.* 19.

Cutting hop-binds.

20. If any person shall unlawfully and maliciously cut any hop-binds growing on poles, in any plantation of hops; he shall be guilty of felony, without benefit of clergy. 6 *G.* 2. *c.* 37. *s.* 5, 6.

Which offence is treated of more at large in the title Black Act.

VIII. Leather.

Duty on leather imported.

1. By the 4 *W. c.* 5. and 9 *An. c.* 11. and 10 *An. c.* 26. certain additional duties are laid on all hides, skins, vellum and parchment imported, over and above what they are charged in the book of rates: which shall be under the management of the commissioners of the customs.

And after the duty shall be paid on importation, the officers of the customs shall cause every hide or skin to be marked, to denote the payment of the duty. 9 *An. c.* 11. *s.* 6.

But by the 15 *G.* 3. *c.* 35. Raw or undressed goat skins may be imported for five years, duty free. Which by the 20 *G.* 3. *c.* 19. is continued to June 20, 1785, &c.

2. By

2. By the ſaid acts of 9 *An.* *c.* 11. and 10 *An.* *c.* 26. certain duties are impoſed on hides and ſkins, tanned, tawed, or dreſſed in *Great Britain*; and on vellum and parchment made in *Great Britain*; as follows: Duty on leather dreſſed in Great Britain.

On all tanned hides 1 ½ d a pound.

Calf, kips, hogs, and dogs ſkins tanned 1½ d a pound.

Goat ſkins tanned with ſhomack, or otherwiſe to reſemble *Spaniſh* leather, 4 d a pound.

Sheep ſkins tanned for roans after the nature of *Spaniſh* leather, 2 d a pound.

Sheep ſkins and lamb ſkins tanned for glovers and bazils 1¾ d a pound.

(And by the 9 *G.* 3. *c.* 39. Seal ſkins tanned, 1½ d a pound.)

Tanned ſkins not before charged 30 l in the hundred, according to the real value.

All the above to be paid by the tanner.

Horſe hides dreſſed in allom and ſalt or meal, or otherwiſe tawed, 1 s 6 d a hide.

Hides of ſteers, cows, and all other (except horſe hides) dreſſed in allom and ſalt, or meal, or otherwiſe tawed, 3 s a hide.

Calve ſkins and kips dreſſed in allom and ſalt or meal, or otherwiſe tawed, 1½ d a pound.

Slinks ſo dreſſed or tawed, with the hair on, 3 s a dozen.

Slinks ſo dreſſed or tawed, without hair, 1 s a dozen.

Dog ſkins ſo dreſſed or tawed, 1 s a dozen.

Buck and doe ſkins (except what paid the duty on importation) dreſſed in allom and ſalt or meal, or otherwiſe tawed, 6 d a pound.

Kid ſkins ſo dreſſed or tawed (except what paid the duty on importation) 1 s a dozen.

Goat ſkins ſo dreſſed or tawed, 2 s a dozen.

Beaver ſkins ſo tawed, 2 s a dozen.

(Sheep ſkins and lamb ſkins ſo dreſſed or tawed, 1¼ d a pound, and no more, altho' they may have been dipped or ſteeped in the tanner's wooze made of bark or ſhomack before ſuch dreſſing. 3 *G.* *c.* 4. *ſ.* 13. And by the 9 *G.* 3. *c.* 39. ſeal ſkins tawed 1½ d a pound.)

All other tawed ſkins not before charged, 30 l for every 100 l value.

To be paid by the tawers or makers.

For hides and ſkins dreſſed in oil, 6 d. a pound.

Deer, goat, and beavers ſkins, dreſſed in oil, 6 d a pound.

Calve skins dressed in oil, 8 d a pound.
Sheep and lamb skins dressed in oil, 3 d a pound.
All skins dressed in oil, not before charged, 15 l in the hundred, according to the real value; and also 2 d a pound.
To be paid by the oil leather dressers.

For all vellum made in *Great Britain*, 3 s a dozen.
Parchment made in *Great Britain*, 1 s 6 d a dozen.

But such small pieces as have been commonly called pates and tails, and are tanned after they are cut off from the hides, shall not be charged with the duty by weight, but with the duty *ad valorem*; and the same need not to be marked as is hereafter directed. 9 *An. c.* 11. *s.* 46.

What is meant by hides tanned, dressed in oil, and tawed.

3. By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shomack; and by hides and skins *dressed in oil*, are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allom and salt, or meal, or other ingredients properly used by the tawers of white leather. 9 *An. c.* 11. *s.* 3.

Who shall be deemed tawers or dressers.

4. Collar makers, glovers, bridle cutters, and others who dress skins or hides, or pieces thereof, in oil, allom and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 2 *An. c.* 11. *s.* 28.

Duty ad valorem how to be ascertained.

5. The value of the said hides and skins which are to pay *ad valorem*, shall be as they are worth to be sold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dresser. 9 *An. c.* 11. *s.* 14.

No leather to be twice charged.

6. Any hide or skin which hath once paid the duty, shall not be charged under any other denomination. 9 *An. c.* 11. *s.* 3.

Officers for these duties.

7. The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. 9 *An. c.* 11. *s.* 13, 28.

Places of working to be entred.

8. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same; on pain of 50 l. 9 *An. c.* 11. *s.* 15.

And

And if any perſon ſhall not make ſuch entry, or ſhall uſe any private tan yard, workhouſe, pit, fat, mill, or place, he ſhall forfeit 20 l; and the goods found in ſuch private tan yard or place not entred, or the value thereof, ſhall alſo be forfeited. 9 *An. c.* 11. *ſ.* 17.

Officers to enter and ſurvey.

9. The officers at all ſeaſonable times, in the day time, may enter into any tan yard, workhouſe, warehouſe, mill, or other place; and if the owner or occupier ſhall refuſe him entrance, he ſhall forfeit 10 l. 9 *An. c.* 11. *ſ.* 17.

Notice of removing to the place of drying.

10. The ſaid tanners and others ſhall give notice to the officer, of their places for drying and keeping of hides or ſkins, vellum or parchment, and they ſhall give two days notice in writing to the officer, before they take the ſaid goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they ſhall permit the officers to take an account; and ſhall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the ſaid goods from the place of drying, make entry with the officer of the number and quality, and verify the ſame on oath, to be adminiſtred by any juſtice of the peace, or collector or ſupervisor; and they ſhall not remove any of the ſaid goods, from the place of drying, until the duty be firſt charged, entred, and marked. 9 *An. c.* 11. *ſ.* 16.

And if any perſon ſhall not ſend ſuch notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the ſaid goods contrary to this act, he ſhall forfeit 20 l; and alſo ſuch goods unlawfully removed, or the value thereof ſhall be forfeited. *ſ.* 17.

Concealing to avoid the duty.

11. And if any tanner or other ſuch perſon ſhall conceal any hide or ſkin, vellum or parchment, or any part thereof; he ſhall forfeit 20 l, and alſo the goods concealed, or the value thereof. 9 *An. c.* 11. *ſ.* 17.

Tanners to keep ſcales and weights.

12. Tanners, and other the ſaid perſons, ſhall keep ſcales and weights; and ſworn officers ſhall be appointed, for the weighing and other matters to be performed at every ſuch yard or dreſſing place. 9 *An. c.* 11. *ſ.* 18.

And if he ſhall not keep juſt ſcales and weights, or ſhall not permit his hides or ſkins to be weighed, or neglect or refuſe to bring the ſcales, or to aſſiſt at the weighing; he ſhall forfeit 50 l. *ſ.* 26.

And by the 10 *G.* 3. *c.* 44. if he ſhall uſe falſe or inſufficient ſcales or weights, he ſhall forfeit 100 l: but not to be proſecuted both on this and the former act.

Duty to be aſcertained before removal.

13. Tanners, and other the ſaid perſons, ſhall before any the ſaid goods be removed from the place of dreſſing,

drying, or keeping, give two days notice in writing to the officer (for giving of which notice he ſhall not be obliged to go further than the next market town); and ſhall permit the officer to weigh the goods chargeable by weight, and bring the ſcales, and aſſiſt in weighing; and ſhall permit the officer to take an account of the number and quality of the goods to be charged by tale; and ſhall aſcertain the value of ſuch goods as are to be charged *ad valorem*, by his oath to be taken before the ſaid officer, or a juſtice of the peace. 9 *An. c.* 11. *ſ.* 19.

Charge by the officer.

14. And after the duties are aſcertained by weight, tale, or value reſpectively, the officer ſhall enter the ſame in a book, and make return thereof to the commiſſioners or whom they ſhall appoint, leaving a true copy thereof under his hand, with ſuch tanner or other perſon. 9 *An. c.* 11. *ſ.* 20.

Leather to be marked.

15. Immediately after the duty ſhall be aſcertained, and entry thereof made, the officer ſhall cauſe every hide or ſkin, and every piece of a hide or ſkin, and all vellum and parchment, to be marked. 9 *An. c.* 11. *ſ.* 21.

In what part to be marked.

16. And if ſuch tanner or other perſon ſhall deſire the mark to be made, on any particular part of the hide or ſkin; the officer ſhall mark it accordingly. 9 *An. c.* 11. *ſ.* 22.

Removing before marked.

17. And if any tanner, or other ſuch perſon, ſhall remove from his yard or drying place any the ſaid goods, before the duties ſhall be charged, and before they be marked; or if any buyer ſhall carry away the ſame before they be marked, he ſhall forfeit 50l; and the ſaid goods ſo unlawfully ſold or removed, ſhall alſo be forfeited. 9 *An. c.* 11. *ſ.* 26.

Counterfeiting the ſtamp.

18. And if any perſon ſhall counterfeit the ſtamp, or knowingly ſell any the ſaid goods with a counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy. 9 *An. c.* 11. *ſ.* 44.

Leather ſtamped to be kept ſeparate,

19. And to prevent frauds between the officers and tradeſmen, all tanners, tawers, and dreſſers of hides, ſkins, vellum and parchment, ſhall keep thoſe which have not been ſtamped, from thoſe which have, and alſo thoſe which have been laſt ſtamped, from thoſe which have been ſtamped before, for 24 hours within the bills, and for two days elſewhere; unleſs they ſhall have ſooner been weighed and taken account of by the ſurveyor or ſupervisor; on pain of 10l. 5 *G. c.* 2. *ſ.* 10.

And not to be removed till after 24 hours.

20. And they ſhall not remove the ſame for 24 hours from the ſtamping thereof, unleſs the ſame ſhall ſooner have been weighed by the ſupervisor or ſurveyor, that ſo they

they may have an opportunity to re-weigh the ſame after the inferior officers: And if any additional weight ſhall be found; the ſaid hides, or ſkins, and pieces thereof, ſhall be charged accordingly. And if ſuch tanner, tawer, or dreſſer ſhall remove, or cauſe or ſuffer the ſame to be removed contrary hereunto; he ſhall forfeit 20 l. 5 *G.* 3. *c.* 43. *ſ.* 21.

And he ſhall keep ſcales and weights for ſuch re-weighing; and bring the hides and ſkins and pieces thereof to the ſcales; and aſſiſt the ſurveyor and ſupervifor in re-weighing, and in examining from time to time the depending ſtock of ſuch tanner, tawer, or dreſſer; on pain of 50 *l.* *ſ.* 22.

Payment of the duties.

21. Perſons within the bills of mortality ſhall pay off the duties in 14 days to the commiſſioners, and elſewhere in ſix weeks to the collectors, after the ſaid goods ſhall be marked. 9 *An.* *c.* 11. *ſ.* 23.

But no perſon ſhall be obliged, for payment of the duties, to go further than the next market town. *ſ.* 24.

And perſons not paying as aforeſaid ſhall forfeit double duty; and ſhall not deliver out any of the ſaid goods until the duty be paid, on pain of double value. *ſ.* 25.

Tanners to balance accounts with the officers.

22. Every tanner, and other ſuch perſon, ſhall once in three months (if demanded) make an account with the officer, of the goods taken out of the wooze, or other ingredients, and of his entries thereof, and balance the ſaid account by the goods which have been charged, and thoſe which are in his poſſeſſion unmarked and uncharged; on pain of 50 l. 9 *An.* *c.* 11. *ſ.* 27.

Exportation.

23. On exportation of hides or ſkins, tanned, tawed, or dreſſed, and marked, and of boots, ſhoes, gloves, or other manufactures made of leather, chargeable for the duty by weight; a drawback ſhall be allowed of two thirds of the duty. 9 *An.* *c.* 11. *ſ.* 39. 12 *An. ſt.* 2. *c.* 9. *ſ.* 65.

Except that for tanned leather manufactured into boots, ſhoes, gloves, and other wares; a drawback of 1½d for a pound weight, ſhall be allowed in lieu of the ſaid two thirds of the duty. 12 *An. ſt.* 2. *c.* 9. *ſ.* 64.

And a drawback of 1d for a pound weight of ſeal ſkins tanned or tawed, ſhall be allowed in lieu of any other drawback. 9 *G.* 3. *c* 39.

Penalties how recoverable.

24. Any two juſtices reſiding near, may hear and determine offences; who ſhall on information or complaint in three months after ſeizure made, or offence committed, ſummon the party accuſed, and the witneſſes, and on appearance or contempt of the party (on proof of notice given) ſhall examine witneſſes on oath, and give judgment, and iſſue warrants for levying the pecuniary penalties by diſtreſs and ſale (if not redeemed in ſix days). 9 *An.* *c.* 11. *ſ.* 36.

25. And

Mitigation.

25. And they may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and ſo as the mitigation do not reduce the penalties to leſs than one fourth part, over and above the charges. 9 *An. c.* 11. *ſ.* 37.

Appeal.

26. Perſons aggrieved may appeal to the next ſeſſions, who may determine the ſame, and iſſue warrants for levying the penalties. 9 *An. c.* 11. *ſ.* 36.

Certiorari.

27. And no certiorari ſhall be allowed. 9. *An. c.* 11. *ſ.* 47.

IX. Linen cloth, ſilks, and cottons.

Duty on importation.

1. By the 10 *An. c.* 19. and the 12 *An. ſt.* 2. *c.* 9 There ſhall be paid for all chequered and ſtriped linens, and upon all linens printed, painted, ſtained, or dyed, after the manufacture, or in the thread or yarn, in any foreign parts, which ſhall be imported, and may lawfully be worn, over and above other duties, 30l for every 100l value; which ſhall be under the management of the commiſſioners of the cuſtoms.

Except lawns, ſtriped or chequered linens, being all white, and neckcloths ſtriped at the end only, and alſo barras, or packing canvaſs, and buckrams. 12 *An. ſt.* 2. *c.* 9. *ſ.* 5. 12 *An. ſt.* 2. *c.* 19.

And after the duty is paid, the ſaid printed linens imported ſhall be ſtamped by the officers of the cuſtoms. 10 *An. c.* 9. *ſ.* 68.

And by the 7 *G.* 3. *c.* 28. certain additional duties on importation are impoſed; viz. For every ell of linen cloth or ſheeting above one yard wide (except Flanders Holland cloth) 3d; and for every ell of linen cloth called Drilling, 3d.

And by the 7 *G.* 3. *c.* 58. for every ell of foreign linen called packing canvas, Spruce Elbing, or Queenſborough canvas, one farthing; for every ell of Dutch barras and Heſſian canvas, one halfpenny; and for every yard of foreign lawn bleached in Holland, commonly called Holland whited lawn, one penny.

Home duties.

2. By the 10 *An. c.* 19. and the 12 *An. ſt.* 2. *c.* 9. over and above the duties payable on the importation of any of them, there ſhall be paid, for all *linen* ſtuffs printed, ſtained, painted or dyed in *Great Britain*, 3d a yard in length, reckoning yard wide.

For all *ſilks* printed, ſtained, or painted in *Great Britain*, (ſilk handkerchiefs excepted) 12d a yard in length, reckoning half a yard for the breadth. (And by the 7 *G* 3. *c.* 47. Whereas doubts have ariſen whether ribbands and ſilks ſo printed, ſtained, or painted, being leſs than half a yard

yard in breadth, are within the meaning of the ſaid acts; it is declared, that all ribbands and ſilks printed, ſtained, or painted in *Great Britain*, tho' leſs than half a yard in breadth, are within the meaning thereof, and liable to the ſaid duties, according to the proportions in which ſuch ribbands and ſilks are made. *ſ.* 6)

And for all *ſilk handkerchiefs* ſo printed, ſtained, or painted in *Great Britain*, 4 d a yard ſquare.

And for al l *callicoes* printed, ſtained, painted, or dyed in *Great Britain*, 6 d for every yard in length, reckoning one yard wide, or within one eighth thereof.

Except ſuch callicoes, linens, and fuſtians as ſhall be dyed throughout of one colour only, and ſtuffs made of woollen, or whereof the greateſt part in value ſhall be woollen.

And by the 14 *G.* 3. *c.* 72. for all *cottons* wholly made of cotton ſpun in *Great Britain*, printed, ſtained, painted, or dyed with any colour or colours, 3 d a yard in length, reckoning yard wide.

Obſervation as to callicoes.

3. But it is to be obſerved, that ſuch painted or ſtained callicoes cannot be of uſe for wearing apparel, and therefore the printing or ſtaining of them muſt be chiefly in order for exportation; for by the 7 *G. ſt.* 1. *c.* 7. it is enacted, that no perſon ſhall uſe or wear in any apparel, any printed, painted, ſtained, or dyed callicoe; on pain of 5 l to the informer, on conviction on the oath of one witneſs before one juſtice; who ſhall, on information on oath in ſix days after the offence, ſummon the party, and upon his appearance or contempt examine the matter, and on proof by confeſſion, or oath of one witneſs determine the ſame, and on conviction cauſe the penalty to be levied by diſtreſs and ſale, rendring the overplus (charges of diſtreſs and ſale being firſt deducted): Provided that perſons aggrieved may appeal to the next quarter ſeſſions, giving ſix days notice. *ſ.* 1.

And if any perſon ſhall offer the ſame to ſale, or any houſhold furniture made up of or mixed therewith, unleſs for exportation; he ſhall forfeit 20 l, half to the informer, and half to the poor of the pariſh or place where the offence ſhall be committed, to be recovered in the courts at *Weſtminſter*, with full coſts, on proſecution in ſix months; and if he is a ſteward or other officer of a corporation, he ſhall alſo forfeit his office. *ſ.* 2, 4.

And no perſon ſhall uſe the ſame in any houſhold furniture, on like pain of 20 l. *ſ.* 3.

But this ſhall not extend to callicoes dyed all blue. *ſ.* 11.

But the ſame ſhall extend to ſtuff made of cotton, or mixed therewith, printed or painted; and to callico chequered

quered or ſtriped; and to callico ſtitched or flowered in foreign parts with any colour (muſlins, neckcloths, and fuſtians excepted). *ſ.* 10.

But it ſhall be lawful to uſe ſtuff made of linen yarn and cotton wool manufactured and printed or painted in *Great Britain*, provided the warp thereof be entirely linen yarn. 9 *G.* 2. *c.* 4.

Obſervation as to cottons.

4. By the 14 *G.* 3. *c.* 72. Whereas doubts have ariſen, whether ſtuffs wholly made of raw cotton wool within this kingdom ought not to be conſidered as *callicoes*, and as ſuch be liable to the like duties, penalties, and prohibitions; it is enacted, that no greater duty ſhall be paid for the ſame than 3d a yard as aforeſaid, and that any perſon may uſe the ſame in apparel or otherwiſe. *ſ.* 1, 2.

And in every piece thereof ſhall be wove in the warp in both ſelvedges three blue ſtripes, each ſtripe of one thread only; the firſt of which ſtripes ſhall be the firſt or outermoſt thread, the ſecond of the ſaid ſtripes ſhall be the third thread, and the third of the ſaid ſtripes ſhall be the fifth thread: and each piece ſhall be ſtamped at each end with a ſtamp to be provided by the officers of exciſe; and inſtead of the word *callico*, which ſtands for foreign callicoes, each piece ſhall be marked with the words *Britiſh manufactory*. *ſ.* 3.

And if any perſon ſhall expoſe to ſale any ſtuffs wholly made of cotton, and printed, painted, ſtained, or dyed (muſlins, neckcloths, and fuſtians excepted), wherein ſuch mark ſhall not be woven; he ſhall forfeit the ſame, and 50 l for each piece. *ſ.* 4.

(Provided always, that nothing in this act ſhall extend to cotton velvets, velverets, or other fuſtians, not manufactured in *Great Britain*. ſ. 5.)

And if any perſon ſhall counterfeit ſuch ſtamp, or knowingly ſell any ſuch ſtuffs with a counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy. *ſ.* 8, 10.

And if any perſon ſhall import any callicoes, muſlins, or other goods or ſtuffs made of linen yarn only, or of linen yarn and cotton wool mixed, or wholly of cotton wool, wherein ſhall be wove in the ſelvedge any ſuch blue ſtripe; he ſhall forfeit the ſame, and 10 l for each piece. *ſ.* 9.

And upon oath made by any perſon, that he hath reaſon to ſuſpect, that any printed, painted, ſtained, or dyed ſtuffs, wholly made of cotton, for which a duty ought to have been paid, are in the cuſtody or poſſeſſion of any draper or other perſon for his uſe, without having thereupon ſuch ſtamps or marks as aforeſaid; two commiſſioners within the bills, and two juſtices elſewhere, ſhall iſſue their war-

warrant to any officer of the said duties, with the assistance of a constable, in the day time, to search for the same, and to open doors, trunks, chests, and package, and to seize such goods, and bring them to the next office for the said duties. *s.* 11.

One moiety of the penalties and forfeitures on this act shall be to the king, and the other moiety to him who shall sue. *s.* 12.

And if any question shall arise, whether any of the said stuffs wholly made of cotton were manufactured in *Great Britain*; the proof shall lie on the owner, and not on the prosecutor. *s.* 14.

5. Every such printer, painter, stainer, or dyer shall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 30 l. 10 *An. c.* 19. *s.* 71. Houses to be entred.

And by the 1 *G. st.* 2. *c.* 36. Where any person shall take upon him to print, paint, stain, or die any silks, linens, or stuffs at any other place than the place of his usual residence or exercise of his trade; he shall first make entry with the officer of the division, where he intends to do the same, and pay down the duties, on pain of 50 l; and also the said goods shall be seized and forfeited. *s.* 21.

6. The officers shall at all times by day or night, and if by night in presence of a constable, be permited on request to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make thereof a report in writing to the commissioners or to whom they shall appoint, leaving a copy if demanded, under his hand; and if he shall make default in leaving such copy (after demand in writing, 12 *G. c.* 28. *s.* 30.) he shall forfeit 40 s. 10 *An. c.* 19. *s.* 75. Officers to enter and take account.

7. And none of the said persons shall obstruct the officer in execution of his duty; on pain of 20 l. 10 *An. c.* 19. *s.* 78. Obstructing the officer.

8. Every such printer and other person, shall once in six weeks make entry in writing at the next office, on oath before the collector or supervisor, of all such goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50 l. 10 *An. c.* 19. *s.* 72. Entry of goods made.

But no person shall be obliged to go to make entry, further than the next market town. 10 *An. c.* 19. *s.* 73.

9. If the officer shall miss any quantity of the said goods, whereof he had taken an account in his last survey, and shall Officer may charge for goods missing.

ſhall not on reaſonable demand receive ſatisfaction what is become of the ſame; the officer may charge ſuch perſon with the duties of the goods ſo miſſing, as if they were printed, painted, ſtained or dyed. 10 *An. c.* 19. *ſ.* 77.

Goods concealed. 10. And if they ſhall conceal any the ſaid goods, to avoid the duty; they ſhall forfeit 20 l. And all the ſilks, callicoes, linens, and ſtuffs found in any private workhouſe, or other place whereof no notice hath been given, or the value thereof, ſhall be forfeited. 10 *An. c.* 19. *ſ.* 82.

Payment of the duties. 11. They ſhall, within ſix weeks after entry, clear off the duties; on pain of forfeiting double: and if they ſhall deliver out any ſuch goods, after default in payment of the duties, before the ſame ſhall be cleared off; they ſhall forfeit double value of the goods. 10 *An. c.* 19. *ſ.* 74.

Removing before ſtamped. 12. And they ſhall not remove any the ſaid goods, till the officer hath taken account thereof, and until each piece be ſtamped or marked; on pain of 20 l. And the ſame ſo carried away without being marked, and found in the poſſeſſion of any draper or other perſon for his uſe for ſale, may be ſeized or the value thereof recovered. 10 *An. c.* 19. *ſ.* 79.

Goods ſurveyed to be kept ſeparate. 13. And they ſhall keep the goods which have not been ſurveyed, ſeparate from the goods which have been ſurveyed; on pain of 5 l. 10 *An. c.* 19. *ſ.* 81.

Search for goods unſtamped. 14. And on oath by any credible perſon, that he hath reaſon to ſuſpect, that any the ſaid goods are in the poſſeſſion of any draper or other perſon dealing therein, or of any other to his uſe, for ſale, unſtamped; the commiſſioners within the bills, or any two juſtices elſewhere, may iſſue their warrants, requiring ſome officer of the ſaid duties (with a conſtable) in the day time to ſearch for the ſame, and to open doors, cheſts, trunks, and package, and to ſeize ſuch goods, and bring them to the next office. 10 *An. c.* 19. *ſ.* 98.

Goods found unſtamped may be ſeized. 15. And if any the ſaid goods ſhall be found in any place, on land or water (except on ſhipboard for exportation) without being marked with a ſtamp or ſeal, denoting that the duties have been paid or charged; the ſame ſhall be forfeited, and may be ſeized by any officer of the cuſtoms or exciſe, and the perſon in whoſe cuſtody they are found ſhall forfeit 50 l. 5 *G. c.* 11. *ſ.* 15.

Counterfeiting the ſtamps. 16. And if any perſon ſhall counterfeit the ſtamp, he ſhall be guilty of felony without benefit of clergy:

And if any perſon ſhall knowingly ſell any the ſaid goods with a counterfeit ſtamp, he ſhall forfeit 100 l, and be ſet in the pillory in ſome publick place two hours. 10 *An. c.* 19. *ſ.* 97. 13 *G.* 3. *c.* 56.

Exportation. 17. The ſaid goods having paid the duty may be exported;

ported; and there shall be a drawback of the duties. 10 *An. c.* 19. *s.* 94, 95, 96. 12 *An. st.* 2. *c.* 9. *s.* 15.

Power of the justices.

18. The penalties (except as is above mentioned in relation to callicoes) may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and shall be employed half to the use of the king, and half to him that shall discover, inform, or sue. 10 *An. c.* 19. *s.* 92. 24 *G.* 2. *c.* 40. *s.* 33.

Utensils liable.

19. And all the utensils and instruments for printing, painting, staining, or dying such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. 10 *An. c.* 19. *s.* 83.

Cambricks and lawns to be marked by the excise officers.

20. By the 4 *G.* 3. *s.* 37. (which establisheth the corporation of the English linen company for making cambricks and lawns) it is enacted, that the commissioners of excise, where there shall be a manufactory of cambricks or lawns, or of goods known under that denomination, shall appoint the supervisor or other officer to seal the same; for which they shall have such fee as the commissioners shall appoint. *s.* 17, 18.

The manufacturer to give notice in writing to the officer, of the finishing of every piece, before it is taken out of the loom; who shall seal the same at both ends; on pain that such manufacturer taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5 l; and every such piece shall be forfeited, and may be seized by any officer of the customs or excise. *s.* 19.

And the officer, with convenient speed, after notice, shall mark, and also number each piece; and make entry in writing, in books to be provided at the expence of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10 l. *s.* 20.

If the officer shall mark any not made in England, or after the same is taken out of the looms; he shall forfeit 50 l for each piece to him who shall sue, and forfeit his office, and be incapacitated to hold any other office of trust under the crown. *s.* 21.

If any person shall by bribery, or otherwise, prevail upon the officer to commit such offence, he shall forfeit 100 l, and stand in the pillory two hours; and if he shall offer any such bribe, he shall forfeit 50 l. *s.* 22.

And the officer shall yearly, in the month of June, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made; on

pain of diſmiſſion: And he, or his executors, ſhall deliver up the ſeals, on demand from the commiſſioners; on pain of 200 l. *ſ.* 23.

Cambricks and lawns made in England, found unſtamped, ſhall be forfeited, and may be ſeized by any officer of the cuſtoms of exciſe; and after condemnation ſhall be ſold: And every perſon who ſhall ſell or expoſe to ſale, or have in his cuſtody for that purpoſe, any cambricks or lawns made in England, unmarked, ſhall forfeit 200 l. *ſ.* 24.

But the ſaid goods ſo ſeized, condemned, and ſold, ſhall not be worn in this kingdom, but exported, and not be ſold but upon condition of exportation; and ſhall not be delivered out of the warehouſe, until bond be given, to the ſatisfaction of the collector, in double penalty of the goods, that the ſame ſhall be exported, and not relanded. *ſ.* 25.

If any perſon ſhall counterfeit the ſeal appointed by this act; or ſhall import any foreign cambricks or lawns, having ſuch counterfeit mark thereon; or expoſe the ſame to ſale knowing the ſtamp thereon to be counterfeited; he ſhall be guilty of felony without benefit of clergy. *ſ.* 26.

All goods condemned in purſuance of this act, and all pecuniary forfeitures, (not herein otherwiſe directed,) ſhall be ſued for and recovered in any of his majeſty's courts of record at *Weſtminſter*, in the name of the attorney general, or of ſuch officer as aforeſaid; and be applied (after all charges deducted) half to the uſe of the king, and half to the officer or other perſon who purſuant to the directions of this act ſhall ſeize, inform, or ſue. *ſ.* 28.

And if any queſtion ſhall ariſe, where the goods were manufactured; the proof ſhall lie on the owner or claimer, and not on the officer. *ſ.* 31.

X. Malt.

No malt to be imported

1. By the 12 *An. ſt.* 1. *c.* 2. No malt ſhall be imported, on pain of forfeiting the ſame, and the value thereof. *ſ.* 26.

And if it is brought in from *Scotland* by ſea, it ſhall be entred at the port of landing, and pay the like duty as *Engliſh* malt, unleſs a certificate is produced that it hath paid the duty of 4½d a buſhel in *Scotland*, and then it ſhall only pay 4½d more, to make it equal with the *Engliſh*: and if it is brought by land, it ſhall be carried through *Berwick or Carliſle*, and there pay in like manner, on pain of forfeiting the ſame or the value thereof;

and if it is carried beyond *Berwick* or *Carliſle*, without entry or payment, the officers of exciſe may ſeize the ſame. 33 *G.* 2. *c.* 7. *ſ.* 10. 1 *G.* 3. *c.* 3. *ſ.* 6.

Duty on malt.

2. By the 12 *An. ſt.* 1. *c.* 2. (which is continued yearly), and by the 33 *G.* 2. *c.* 7. there ſhall be paid by the maker for all malt made in *England* (except it be made for exportation only, 12 *G. c.* 4. *ſ.* 48.) a duty of 9 d a buſhel. And by the 19 *G.* 3. *c.* 25. an additional duty of 15 l *per cent.*

And by the 20 *G.* 3. *c.* 35. and 21 *G.* 3. *c.* 55. and 22 *G.* 3. *c.* 68. Over and above all other duties, there ſhall be paid for every buſhel of malt made in England, whether for ſale or not for ſale, the ſum of 6 d; in Scotland 3 d, and if brought from Scotland into England 3 d more.—And for the encouragement of common brewers and makers of beer or ale for ſale, and that they may not be under the neceſſity of taking more in the price thereof upon retail than according to the uſual rates; there ſhall be allowed the ſum of 1 s 4 d upon every barrel of beer or ale above 11 s a barrel excluſive of the duties of exciſe, brewed by the common brewer, or by any other perſon who ſhall ſell or tap out beer or ale, publickly or privately, within the bills of mortality, and returned by the gager; and 1 s 8 d elſewhere: And 4 d upon every barrel of 11 s a barrel or under, either within the bills of mortality, or elſewhere in England. Which ſaid allowances ſhall be made at the time when they pay the ſaid duties reſpectively.

What ſhall be deemed a buſhel.

3. And every round buſhel with a plain bottom, 18½ inches wide throughout, and eight inches deep, ſhall be deemed a legal *Wincheſter* buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 7.

Officers for theſe duties.

4. The ſaid duty ſhall be under the management of the commiſſioners and officers of exciſe. 12 *An. ſt.* 1. *c.* 2. *ſ.* 3.

Places of making to be entred.

5. No perſon making malt (other than compounders) ſhall ſet up, alter, or uſe any ciſtern, uting fat, utenſil, or other veſſel, for the wetting or ſteeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without firſt giving notice in writing at the next office of exciſe; or ſhall keep or uſe any private ciſtern or other veſſel for the wetting his barley or corn, other than ſuch as are known and made uſe of in his common malting houſe, on pain of 50 l. 12 *An. ſt.* 1. *c.* 2. *ſ.* 36.

Officer to enter and ſurvey.

6. The officer ſhall in the day time be permitted, on requeſt, to enter the houſe, malt houſe, and all other places belonging to or uſed by any maker of malt (*either for ſale or not for ſale*); and to gage all ciſterns, uting

fats, and other veſſels uſed for wetting or ſteeping corn, and take account of the quantity; and ſhall thereof make return to the commiſſioners, or whom they ſhall appoint, leaving a copy with ſuch maltſter; and if any ſuch maltſter ſhall refuſe to permit ſuch officer, he ſhall forfeit 20l. 12 *An. ſt.* 1. *c.* 2. *ſ.* 4.

And if the officer ſhall refuſe or neglect (after demand in writing, 12 *G. c.* 28. *ſ.* 30l) to leave a copy of the gage for the maker, at the time of taking the gage; he ſhall forfeit 40s. *ſ.* 31.

And by another clauſe in the ſaid act, the officer ſhall on requeſt be permitted, by night or by day, but if in the night then in preſence of a conſtable, to enter the houſe, malt houſe, and other place belonging to or made uſe of by any maker of malt *for ſale*, common brewer, innkeeper, victualler, diſtiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted; and if ſuch maker ſhall refuſe to permit him, he ſhall forfeit 20l. *ſ.* 34.

Obſtructing the officer.

7. And by a general clauſe in the 1 *G. ſt.* 2. *c.* 2. If any maker of malt for ſale, ſhall obſtruct any officer of exciſe, in the execution of any of the powers given him for ſecuring the ſaid duties, he ſhall forfeit 10l. *ſ.* 4.

Manner of gaging.

8. The officers ſhall meaſure corn making into malt, by the gage only, and not by the buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 17.

Time for making.

9. No perſon ſhall make any barley malt (except in *June*, *July* and *Auguſt*) but that the ſame ſhall have in making thereof, that is in the fat, floor, ſteeping and drying three weeks at leaſt; nor in *June*, *July*, and *Auguſt*, but that it ſhall have 17 days at the leaſt (unleſs it be for his own houſe); on pain of forfeiting for every quarter 2s, half to the king, and half to him that ſhall ſue: And the juſtices in ſeſſions, and the ſteward in the leet, may hear and determine the ſame, as well by preſentment of 12 men, as by accuſation or information of two honeſt witneſſes. 2 & 3 *Ed.* 6. *c.* 10. *ſ.* 2, 3, 4, 5.

Dreſſing of malt.

10. If any perſon ſhall put to ſale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of duſt or more; he ſhall forfeit for every quarter 20d, half to the king, and half to him that ſhall ſue in like manner in the ſeſſions or leet. 2 & 3 *Ed.* 6. *c.* 10. *ſ.* 3, 4.

Mixing bad malt with good.

11. No perſon (except it be for his own houſe) ſhall mingle any malt, not well made, or made of mow burnt, or ſpired barley, with other good malt, and after put the ſame to ſale; on pain to forfeit for every quarter 2s, half

half to the king, and half to him that ſhall ſue in like manner in the ſeſſions or leet. 2 & 3 *Ed.* 6. *c.* 10. *ſ.* 2, 3, 4, 5.

And the bailiffs and conſtables of the town where malt ſhall be made, or put to ſale, may ſearch the ſame: And if they ſhall find it to be evil made or mingled with evil malt, they ſhall with the advice of one juſtice cauſe it to be ſold to ſuch perſons, and at ſuch reaſonable prices, and under the common price of the market, as to him ſhall ſeem neceſſary and expedient. *ſ.* 4.

Preſſing malt in the ciſtern.

12. If any corn, in any ciſtern, uting fat, or couch, ſteeping or ſteeped, in order to the making thereof into malt by any maltſter (other than compounder) ſhall be found ſo hard, cloſe, and compact, as it could not be, unleſs it had been forced together to prevent its ſwelling; every maltſter and maker of malt (other than compounders) where the ſame ſhall be found, ſhall forfeit 5 s a buſhel; and proof being made thereof, the ſame ſhall be concluſive evidence of the fact, and ſubject the maltſter to the penalty. 1 *G.* 3. *c.* 3. *ſ.* 17.

Mixing with corn of a former wetting.

13. No maker of malt (other than compounders) ſhall mix corn of one wetting with corn of a former wetting; or mix any of his couches or floors, with corn of a former wetting, before the ſame is put on the kiln for drying: on pain of 5 s a buſhel. 2 *G.* 2. *c.* 1. *ſ.* 11.

Mixing malt with unmalted corn.

14. If any dealer in malt, ſhall with malt fraudulently mix any unmalted corn, or ſell or expoſe to ſale any ſuch mixture, or ſhall attempt to ſhip off any ſuch mixture, in order to export the ſame; he ſhall forfeit 5 s a buſhel. 1 *G. ſt.* 2. *c.* 2. *ſ.* 13.

Mixing malt gaged with malt ungaged.

15. If any maltſter ſhall fraudulently convey, or cauſe or ſuffer to be conveyed away, from the ciſtern, uting fat, or other wetting place or utenſil, any ſteeping or part of any ſteeping of corn making into malt; and ſhall mix the ſame with any couch or floor of other corn making into malt, which is then depending and in operation, and which hath been gaged or charged with the duty in the couch, he ſhall forfeit 100 l. 1 *G.* 3. *c.* 3. *ſ.* 18.

Concealing malt to avoid the duty.

16. If any maker of malt ſhall fraudulently conceal any malt from the view of the gager; he ſhall forfeit 10 s a buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 35.

Concealing malt to avoid being gaged in the couch.

17. If any maltſter ſhall fraudulently convey, or cauſe or ſuffer to be conveyed away, from the ciſtern, uting fat, or other wetting place or utenſil, any ſteeping or part of any ſteeping of corn making into malt, ſo that no gage thereof can be taken in the couch by the officer; he ſhall forfeit 100 l. 1 *G.* 3. *c.* 3. *ſ.* 18.

Allowance for malt ſwelling.

18 Out of every 20 buſhels charged by the gager, there ſhall be an allowance made of malt charged in the uting fat, ciſtern, or other veſſel, wherein the ſame ſhall be found wetting or ſteeping, or on the floor within 30 hours after the ſame ſhall be thrown out of ſuch veſſel,——of four buſhels, for the difference between the quantity when it is wet and ſwoln, and when it is not converted into dry malt. 12 *An. ſt.* 1. *c.* 2. *ſ.* 20.

And if any corn that hath been ſteeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not anſwer ſo great a quantity from the floor as from the ciſtern; out of every 20 buſhels ſo charged upon the floor, there ſhall be allowed to the maker of the malt which ſhall be gaged upon the floor, after it hath been thrown out of the ciſtern 30 hours or more, and before it ſhall be dried, ten buſhels, for the difference between the quantity when it is making upon the floor, and when it is dried. 12 *An. ſt.* 1. *c.* 2. *ſ.* 28.

But if any maltſter ſhall not wet or ſteep his barley or other corn, in the ciſtern, uting fat, or other veſſel, ſo as the ſame be covered with water, and continue ſo covered, for 40 hours before he take the water from it; he ſhall not be intitled to the ſaid allowance of 4 buſhels in every 20 as aforeſaid. 33 *G.* 2. *c.* 7. *ſ.* 64.

And in order that it may be aſcertained when ſuch corn is begun to be wetted or ſteeped, and to prevent frauds in mixing corn with corn ſteeping; the maltſter, within a city or market town, ſhall give 24 hours, elſewhere 48 hours notice in writing to the officer, of the hour or time of the day when he intends to wet corn or grain to be made into malt: And if he ſhall not begin, and immediately after proceed to cover the whole thereof with water, at the time mentioned in the notice, or within 3 hours after, the notice ſhall be void; and he ſhall be obliged to give a freſh notice before he begin. And he ſhall not begin, but between 4 in the morning, and 9 in the evening. And if he ſhall not give ſuch notice; or having begun to wet ſuch corn, ſhall not immediately proceed to cover the whole with water, and continue the ſame covered for 40 hours; or begin to wet any but between 4 in the morning and 9 in the evening; or after the officer hath taken account of the corn ſteeping, ſhall add any freſh corn or grain; he ſhall forfeit 100 l. 3 *G.* 3. *c.* 13.

Entry of malt made.

19. The maltſter ſhall monthly make entry at the office of exciſe, of all the malt made (either for ſale or not for ſale) in ſuch month; on pain of 10 l. 12 *An. ſt.* 1. *c.* 2. *ſ.* 4.

20. And

20. And he ſhall, within four months after entry, pay off the duties, on pain of forfeiting double; and after ſuch default, he ſhall not ſell or carry out any malt until the duty is paid, on paid of double value. 12 *An. ſt.* 1. *c.* 2. *ſ.* 6. 1 *G. ſt.* 2. *c.* 2. *ſ.* 8. Payment of the duty.

21. After the duty is paid, if any quantity ſhall be damaged by the ſinking of the veſſel in which the malt ſhall be tranſported from one part of the kingdom to another; the juſtices ſhall at the next ſeſſions, on proof of ſuch damage and of the payment of the duty, ſettle the quantity of the damage, and the allowance to be made in reſpect thereof, and give a certificate of the ſum allowed, which ſhall bear the ſame proportion to the whole duty, as the damage ſhall bear to the value of the malt: on producing of which certificate, the officer ſhall repay or allow to the proprietor the ſum certified. 12 *An. ſt.* 1. *c.* 2. *ſ.* 14. Drawback of the duty for malt damaged.

But where ſuch loſs ſhall happen, the perſon who ſhall ſuſtain the ſame, ſhall three days before the next ſeſſions, leave notice thereof in writing with the collector of the diſtrict where the loſs ſhall happen, and of his intention of applying to the ſaid ſeſſions. *ſ.* 15.

22. After the duty is paid, if any malt ſhall be deſtroyed by fire, by burning of the place where it is kept; or periſh by water, by caſting away of the veſſel in which it is tranſported; the owner may make proof thereof by two witneſſes on oath, and of his having paid the duty, at the next quarter ſeſſions, where ſuch accident ſhall happen; who ſhall grant a certificate of ſuch loſs, on producing of which, the duty ſhall be repaid. 12 *An. ſt.* 1. *c.* 2. *ſ.* 27. Drawback for malt periſhed.

23. By ſeveral acts power was given to the officers to compound for the duties upon malt to be conſumed in private families at 7s 6d a head by the year; but this having been found to be the occaſion of great frauds, this power is aboliſhed by 23 *G.* 3. *c.* 64. Compounding.

24. No malt entred and made for exportation only, ſhall be liable to the duties; and no drawback ſhall be allowed for any malt exported. 12 *G. c.* 4. *ſ.* 48. 33 *G.* 2. *c.* 7. *ſ.* 14. Exportation.

But the maker ſhall be allowed, in conſideration of his extraordinary charge and trouble, 3d for every quarter made for exportation. 12 *G. c.* 4. *ſ.* 59.

And by the 1 *G.* 3. *c.* 3. There ſhall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters of malt, and no more, on exportation, tho' by ſteeping it ſhall run out into any greater quantity. *ſ.* 9.

And the maker, before he ſhall begin to wet or ſteep any ſteeping of corn to be made into malt for exportation,

ſhall leave notice in writing with the officer, of the quantity of corn intended to be contained in each ſteeping, on pain of 50 l; and the ſame ſhall be kept ſeparate from all other corn to be made into malt for home conſumption, on pain of 5 s a buſhel. 12 *G.* *c.* 4. *ſ.* 49, 58.

And no maker of malt ſhall begin to wet corn to make into malt for exportation, above ſix days before all the corn he may have working on his floors for home conſumption ſhall be dried off; nor ſhall he begin to wet corn for home conſumption, above ſix days before all the corn on his floors for exportation be dried and locked up; on pain of 5 s. a buſhel. *ſ.* 50.

And the maker ſhall keep the whole quantity of his corn making into malt for exportation, of one ſteeping or wetting, when the ſame ſhall be on the kiln, or after it ſhall be taken off the kiln, ſeparate from any former ſteeping or wetting, until it hath been meaſured in preſence of the officer; on pain of 50 l. 3 *G.* 2. *c.* 7. *ſ.* 16.

And the officers, during the ſteeping of the corn ſo intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its operations, as in caſe the duties were to be charged thereon. 12 *G.* *c.* 4. *ſ.* 52.

And perſons oppoſing the officers in the execution of this act, ſhall forfeit 50 l. 12 *G.* *c.* 4. *ſ.* 58.

And the ſaid maker ſhall give notice in writing to the officer, or leave notice at the next exciſe office, of the hour when he intends to take any malt off the kiln, that he may attend the meaſuring; and after it has been meaſured, it ſhall (on pain of 50 l) be immediately carried on ſhipboard, or elſe into ſtorehouſes, to be provided by ſuch maker, to be there kept apart from all other malt, under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the ſame be delivered out for exportation. 12 *G.* *c.* 4. *ſ.* 51, 58. 3 *G.* 2. *c.* 7. *ſ.* 17.

And if he, or any perſon with his privity, ſhall open ſuch lock, or make other entrance into the place, or carry any of it away, without conſent of the officer, or notice given to him; he ſhall forfeit 100 l. 3 *G.* 2. *c.* 7. *ſ.* 18.

And when any maker or proprietor ſhall be deſirous to take away any of the malt for exportation, and ſhall thereof give notice in writing to the officer 40 hours before the time he ſhall deſire to take out the ſame, expreſſing in ſuch notice the quantity of the malt, and the port to which it is to be removed; the officer ſhall attend at the place where

where the malt is locked up, and ſee it meaſured and delivered out. 12 *G. c.* 4. *ſ.* 53.

And the officer ſhall keep an account of the malt ſo delivered out, and of the perſon to whom it belongs, and ſhall give ſuch perſon a certificate to the officer of the diviſion to which it is intended to be removed, who ſhall file the ſame, and make an entry thereof; and if the proprietor ſhall neglect to deliver ſuch certificate, he ſhall forfeit 50 l. 12 *G. c.* 4. *ſ.* 54.

And perſons intending to ſhip malt for exportation, ſhall give at leaſt 48 hours notice before they begin to put it on board, to the officer of the port in writing, of the hour when ſuch ſhipping is intended to be begun, and the name of the ſhip; on pain of 5 s a buſhel. 12 *G. c.* 4. *ſ.* 57.

And during the ſhipping, at all ſuch times as the proprietor ſhall not be actually ſhipping merchandizes, the hatches of the ſhip ſhall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches ſhall be ſo kept locked, from the time the ſhips ſhall be loaded till they be ready to ſail. 12 *G. c.* 4. *ſ.* 56.

And perſons breaking open the hatches of any ſhip ſo locked up, ſhall forfeit 50 l. 12 *G. c.* 4. *ſ.* 58.

And the officers may not only attend the meaſuring of ſuch malt, but continue on board the ſhip till they be cleared of their ports. 12 *G. c.* 4. *ſ.* 55.

And if it ſhall be relanded after ſhipping for exportation, beſides the penalty of the bond which ſhall be given for its exportation, the ſame ſhall be forfeited, and treble the value. 1 *G.* 3. *c.* 3. *ſ.* 11.

And the maker who ſhall uſe any ſuch ſtorehouſe for keeping of malt for exportation, ſhall every nine months after the laſt clearing, clear out the ſame on pain of 50 l. 3 *G.* 2. *c.* 7. *ſ.* 20. Or 5 s a buſhel. 12 *G. c.* 4. *ſ.* 57. And by the 1 *G.* 3. *c.* 3. he ſhall clear out in 15 months; on pain of 50 l. *ſ.* 15, 16.

And if any unmalted oats or barley be found mixed among malt ſhipped for exportation, the perſon ſhipping the ſame ſhall forfeit 5 s. a buſhel. 6 *G. c.* 21. *ſ.* 4.

And if ground malt ſhall be exported, it ſhall be computed at ſo many buſhels as it contained before it was ground. 12 *An. ſt.* 1. *c.* 2. *ſ.* 30.

25. The penalties relating to this article (except where it is otherwiſe above directed) ſhall be ſued for, levied, and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and be employed half to the uſe of the king, and half to him that ſhall ſue. 12 *An. ſt.* 1. *c.* 2. *ſ.* 9. 24 *G.* 2. *c.* 40. *ſ.* 33. Power of the juſtices.

Appeal.

26. Perſons aggrieved by any judgment of the juſtices, may appeal to the next quarter ſeſſions, giving ſix days notice in writing: but if there be not ſix days between the order of the juſtices and the ſeſſions, the appeal may be at the ſecond ſeſſions. 12 *An. ſt.* 1. *c.* 2. *ſ.* 37, 38. 1 *G.* 2. *ſt.* 2. *c.* 16. *ſ.* 3.

And the ſeſſions may award coſts to either party, to be levied by warrant of the juſtices or two of them, on the goods of the party. 12 *An. ſt.* 1. *c.* 2. *ſ.* 38.

Certiorari.

27. And no certiorari ſhall be allowed, to ſet aſide any order of the juſtices. 12 *An. ſt.* 1. *c.* 2. *ſ.* 37.

Malt liable to the duties and penalties.

28. And all malt in cuſtody of the maker, ſhall be liable to the duties and penalties, in the ſame manner as if he were the lawful owner. 12 *An. ſt.* 1. *c.* 2. *ſ.* 10.

XI. Paper.

Duty on paper imported.

1. By the 10 *An. c.* 19. and 12 *An. ſt.* 2. *c.* 9. (which are in part altered and explained by the 12 *An. ſt.* 2. *c.* 19. and 11 *G. c.* 7.) and by the 13 *G.* 3. *c.* 67. certain duties are impoſed on paper imported; which ſhall be under the management of the commiſſioners of the cuſtoms.

But old rags, old ropes, or junks or old fiſhing nets may be imported duty free. 11 *G. c.* 7. *ſ.* 10.

Duty on paper made in Great Britain.

2. And by the ſaid acts of 10 *An. c.* 19. and 12 *An. ſt.* 2. *c.* 9. certain duties are laid on all paper made in *Great Britain*; which duties by the 21 *G.* 3. *c.* 24. are repealed, and new duties granted inſtead thereof, on no leſs than 77 different kinds and denominations of paper, too long and too minute to be here inſerted, and therefore for theſe it may be proper to refer to the act it ſelf. Which duties are chargeable according to the ſeveral qualities and dimenſions of the paper, after the rate of ſo much a ream, or bundle, or according to their weight, or *ad valorem*.

The *ream* to conſiſt of 20 quires; and each *quire* of 24 ſheets, except that the quire of double demy for news papers ſhall conſiſt of 25 ſheets:

A *bundle* to conſiſt of 40 quires; and each quire of 24 ſheets, except as before for news papers. 21 *G.* 3. *c.* 24. *ſ.* 5, 6.

Paper paying *ad valorem* to be computed as it ſhall be worth to be ſold at *London* without reſpect to the duties to be charged thereon, upon the oath of the maker according to the beſt of his knowledge and belief, to be taken before the collector or ſupervisor: And the collector ſhall receive the ſaid duties ſo ſworn to *ad valorem*. And for the preventing of frauds, the exciſe officers may examine any parcel,

parcel, and if found to be undervalued, may detain and convey it to the next office of excise; and the collector shall, out of any money in his hands, pay to the maker on demand the value of such paper so sworn to, together with an addition of 10 l *per cent*' over and above such value, taking a receipt for the same; and the commissioners may, whether such demand be made or receipt given or not, cause the paper to be sold, and dispose of the produce, half to the officers, and half into the exchequer. *s.* 8, 9.

And if any of the present denominations of paper shall hereafter be altered, the same duties shall nevertheless be paid. And if any new fabric or kind of paper shall be made, the maker shall pay the duties charged upon paper which shall be nearest above in size and goodness; which if he shall refuse or neglect to do, the same shall be charged after the rate of 18 l *per cent*', to be estimated on the oath of the maker as aforesaid. *s.* 5, 7.

Painted paper, to serve for hangings or other uses, shall, beside the duty paid for the paper before painting, pay as by the former acts, *viz.* 1½ d a yard square. *s.* 1. (For painted paper is excepted out of the present act of 21 *G.* 3. *c.* 24. and therefore rests upon the aforesaid former acts; but the regulations concerning the same being very little different from those concerning the new duties, except only with respect to the largeness of the penalties, and as in them both there is an equal power of mitigation, it seemeth not necessary distinctly to deduce the whole proceedings relating to the painted paper singly.)

Pasteboard, which has paid the duties, shall not be charged with any further duties, upon the pasting together the sheets of such paper, and its receiving thereby the denomination of pasteboard or patted paper. *s.* 42.

Books printed at *Oxford* or *Cambridge*, in Latin, Greek, Oriental, or Northern languages, shall have a drawback of the duty. *s.* 40.

3. The commissioners of the treasury shall appoint commissioners of these duties; and they shall substitute inferior officers. 10 *An.* *c.* 19. *s.* 41. Officers of the duties on paper

4. The maker shall give notice in writing at the next office of his name and place of abode, and of every work-house and other place by him made use of for making, drying, or keeping such paper, or of the materials proper to be made into paper, and also of all the mills, vats, presses, utensils, and vessels used in making the same; on pain that if he makes any before such notice, he shall forfeit 50 l. 21 *G.* 3. *c.* 24. *s.* 10. Places of making to be entred.

5. The officer shall by day or night, and if in the night in presence of a constable, be permitted on request to enter into Officer to enter and take account.

into the houſe, mill, yard, warehouſe, or other place, and take an account, and make report thereof to the commiſſioners or to whom they ſhall appoint, and leave a copy (if demanded) of ſuch report under his hand with the maker; and if he ſhall not leave ſuch copy (after demand in writing) he ſhall forfeit 40s. 10 *An.* *c.* 19. *ſ.* 48. 21 *G.* 3. *c.* 24. *ſ.* 13.

And he ſhall be permitted to take an account of the quantities of rags, cordage, and other materials. 21 *G.* 3. *c.* 24. *ſ.* 15.

Scales and weights.

6. The maker ſhall keep ſcales and weights, and aſſiſt the officer in making uſe thereof, on pain of 20l; and if he ſhall procure or uſe any falſe ſcales or weights, he ſhall forfeit 100l. 21 *G.* 3. *c.* 24. *ſ.* 14.

Obſtructing the officer.

7. And if any perſon ſhall obſtruct any officer in the execution of his duty, he ſhall forfeit 20l. 21 *G.* 3. *c.* 24. *ſ.* 36.

Mark on paper before painting.

8. And before any paper ſhall be printed, painted, or ſtained, the officer ſhall be permitted to take account of the dimenſions, and ſhall ſtamp or ſeal every ſheet and piece, to denote that ſuch account hath been taken; and if the officer ſhall miſs any quantity whereof he had ſo taken an account, and ſhall not on reaſonable demand receive ſatisfaction what is become of it, he may charge the duties for it. 1 *G.* *ſt.* 2. *c.* 36. *ſ.* 17.

Removing before account taken.

9. No maker ſhall remove any paper of which no account hath been taken; on pain of 50l, and forfeiture of the paper, and of the horſes, boats, or veſſels removing the ſame. Provided that, with a proper certificate from the officer of exciſe, paper may be removed from the mill where made, to any other mill, there to be ſized or finiſhed fit for uſe. 21 *G.* 3. *c.* 24. *ſ.* 16, 17.

And no perſon ſhall remove any ſuch painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel ſhall be marked or ſtamped; on pain of 20l: and the ſaid paper being found in the poſſeſſion of any ſtationer or other dealer, or other perſon for his uſe, ſhall alſo be forfeited. 1 *G.* *ſt.* 2. *c.* 36. *ſ.* 18.

Concealing from the officer.

10. The maker concealing any paper or materials, ſhall forfeit 50l, and alſo the paper and materials ſo concealed. 21 *G.* 3. *c.* 24. *ſ.* 26.

Paper unſurveyed to be kept ſeparate.

11. And the maker ſhall keep ſeparate the paper which is unſurveyed, for 48 hours after making, unleſs ſooner ſurveyed by the officer, on pain of 20l. 21 *G.* 3. *c.* 24. *ſ.* 25.

Entry of paper made.

12. The maker ſhall once in ſix weeks make entry on oath of himſelf or his chief workman at the next exciſe office,

office, of all paper made by him fit for uſe, with the kinds and quantities, on pain of 50 l. Provided, that no perſon ſhall be obliged to go to make entry, further than the next market town. 21 *G.* 3. *c.* 24. *ſ.* 11.

13. The maker, if in a market town, ſhall give 24 hours, elſewhere 48 hours notice in writing, before he intends to remove any paper, of the particular hour or time of the day when he intends to have the ſame charged with the duty; and if he attend not at the time, or within one hour after, the notice ſhall be void. 21 *G.* 3. *c.* 24. *ſ.* 20. Duty charged.

And the officer ſhall attend agreeable to ſuch notice; and the maker ſhall produce to him all the paper then to be charged, which ſhall be brought tied up in covers or wrappers, containing one ream, or one bundle each, and thereon to be marked in large legible characters and in words at length, the true denomination of ſuch paper. And the officer may open any ream or bundle, and take ſamples (paying one penny a ſheet if demanded); and if any fraud ſhall be diſcovered, the ream or bundle ſhall be forfeited, and alſo 50 l. *ſ.* 21, 22.

And as ſoon as the officer ſhall be ſatisfied that each ream and bundle is properly tied and incloſed, he ſhall forthwith ſtamp the ſame. *ſ.* 23.

And if any perſon ſhall counterfeit the ſtamp, he ſhall forfeit 500 l, and be impriſoned for 12 months. *ſ.* 31.

14. And the maker ſhall, within ſix weeks after he has made his entry, pay and clear off the duties, on pain of double duty. 21 *G.* 3. *c.* 24. *ſ.* 12. Payment of the duty.

15. If any paper ſhall be damaged by the caſting away or ſinking of the veſſel in which it ſhall be carried from one part of the kingdom to another; the juſtices in ſeſſions, on three days notice given to the collector, may make a proportionable allowance; to be repaid by the collector, or deducted by the proprietor out of his next payment. 21 *G.* 3. *c.* 24. *ſ.* 18, 19. Drawback for paper damaged.

16. Paper which has paid the duty may be exported, on ſecurity given that it ſhall not be relanded: If it ſhall be relanded, the ſame ſhall be forfeited, over and above the penalty of the bond. 21 *G.* 3. *c.* 24. *ſ.* 32, 33. Exportation.

And on exportation, a drawback of the duties ſhall be allowed; on the exporter's giving notice to the proper officer of the cuſtoms, when and where he will put up the goods to be exported; who ſhall attend accordingly, and take an account of the quantity and kinds, and ſee that the ſtamps be taken off from each ream or bundle. *ſ.* 34, 35.

17. All the exciſe laws ſhall be in force for managing theſe duties; and the penalties ſhall be ſued for, miti- Power of the juſtices.

gated,

gated, levied, and disposed of as by the laws of excise, or may be recovered in the courts at *Westminster*. 21 *G.* 3. *c.* 24. *f.* 37, 38.

Utensils liable.

18. And all paper, materials, and utensils, in custody of the maker, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner. 10 *An.* *c.* 19. *f.* 55.

For the stamp duties on paper, see title **Stamps**.

XII. Plate.

Importation.

By the 4 *W.* *c.* 5. and 6 *G.* *c.* 11. additional duties are laid on plate imported, over and above what is charged in the book of rates: which shall be under the management of the commissioners of the customs.

True making of plate.

Assayers.

1. To prevent frauds in the true making of plate it is enacted by the 12 & 13 *W.* *c.* 4. the 1 *An.* *st.* 1. *c.* 9. and 13 *G.* 3. *c.* 52. that (besides the city of *London*) *York*, *Exeter*, *Bristol*, *Chester*, *Norwich*, *Newcastle* upon *Tyne*, *Sheffield*, and *Birmingham* shall be appointed for the assaying and marking of plate.

And the goldsmiths, silversmiths, and plateworkers in the said places, shall be incorporated into a company, and chuse wardens yearly.

And an assayer shall be elected by the company in each of the said places, who shall take an oath of office.

Maker to be entred with the wardens of the company.

2. And by the said acts, every goldsmith, silversmith, and plateworker, within the said places, and elsewhere, shall before he takes upon him to exercise the said trade, enter his name, and mark, and place of abode, with the wardens of the company where an assayer is; and if he shall not make such entry, or shall strike any other mark but what is so entred, he shall forfeit double value, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed.

Assaying.

3. And every goldsmith, silversmith, and plateworker, inhabiting where there is not an assayer, shall first fix his mark, and then send it to an assayer; and if it be found by

by the aſſayer to be of the fineneſs of the ſtandard, then he ſhall mark it: And if any ſuch perſon ſhall make any plate (leſs in fineneſs than the ſtandard) or put any to ſale (except what by reaſon of its ſmallneſs is not capable of the touch) before it ſhall be aſſayed and marked; he ſhall forfeit the ſame or the value thereof.

Fineneſs by the ſtandard.

4. And as to the fineneſs thereof by the ſtandard, it is enacted by the 6 *G.* *c.* 11. that plate may be made, either according to the old ſtandard (of 11 ounces and 2 penny weights fine ſilver in every pound troy); or according to the new ſtandard (of 11 ounces and 10 penny weights): but differently marked. *ſ.* 41.

Mark.

5. That is to ſay, plate of 11 ounces and 2 penny weights, ſhall be marked with the maker's mark, *viz.* the firſt letters of his chriſtian and ſurname; the mark of the goldſmith's company in *London*, *viz.* the leopard's head, lion paſſant and a diſtinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be uſed by the aſſayers at the ſeveral reſpective places:)

And plate of 11 ounces and 10 penny weights ſhall be marked with the maker's mark, *viz.* the firſt letters of his chriſtian and ſurname; and the mark of the ſaid company, *viz.* a lion's head eraſed, the figure of a woman called *Britannia*, and the ſaid mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the ſaid cities or towns reſpectively.) 12 *G.* 2. *c.* 26. *ſ.* 5.

Licence of dealers in plate.

Licence.

1. No perſon, who ſhall trade in, vend, or ſell any gold or ſilver plate, or any goods or wares in which any gold or ſilver ſhall be manufactured, ſhall by himſelf, or by any other imployed by or for him, either publickly or privately, trade in, vend, or ſell any piece of plate or goods, or any ware in which the quantity of gold ſhall be of the weight of two ounces or upwards, or in which the quantity of ſilver ſhall be of the weight of 30 ounces or upwards; unleſs he ſhall have firſt paid a duty of 5l for a licence to be taken out in manner following. 32 *G.* 2. *c.* 24. *ſ.* 3.

How to be taken out.

2. That is to ſay, if it is within the limits of the chief office of exciſe in *London*, the ſame ſhall be granted under the hands and ſeals of two commiſſioners of exciſe; and the duty for the ſame ſhall be paid at the chief office of exciſe in *London*, or at any other place, and to ſuch perſons as the ſaid commiſſioners ſhall appoint to deliver out ſuch licences,

licences, and to receive the said duty: Elsewhere, to be granted under the hands and seals of the several collectors and supervisors of excise, within their respective districts; and the duty for the same shall be paid by the persons taking out such licences, at the office of excise next adjoining to the place where they respectively reside or inhabit, or any other place, and to such persons as the commissioners of excise shall appoint to deliver out such licences and to receive the said duty. 31 *G.* 2. *c.* 32. *s.* 3.

To be renewed yearly.

3. And fresh licences shall be taken out yearly, ten days at least before the expiration of 12 kalendar months after taking out the former licence. *s.* 4.

Penalty of dealing unlicensed.

4. And if any person shall presume or offer to trade in, vend or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or any piece of plate or goods or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of 30 ounces or upwards as aforesaid, without first taking out such licence, and renewing the same yearly; he shall forfeit 20*l.* *s.* 4.

Not to extend to small quantities.

5. Provided that no person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two penny weights, or of silver not exceeding five penny weights, in any one separate and distinct ware or piece of goods. 32 *G.* 2. *c.* 24. *s.* 1.

uctioneer and thers selling ate to be emed traders.

6. All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured; and also all persons employed to sell any gold or silver plate, or any such goods or wares aforesaid, at any auction or publick sale; shall respectively be deemed traders in, sellers, or venders of gold or silver plate, and shall take out a licence for the same. 31 *G.* 2. *c.* 32. *s.* 6.

lwnbrokers id refiners.

7. No pawnbroker shall by himself or by any other for his benefit (either publickly or privately) trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured; and no person by himself or by any other for his benefit shall use the trade of a refiner of gold or silver, without taking out and renewing yearly such licence as aforesaid. 32 *G.* 2. *c.* 24. *s.* 4.

And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate. *id.*

And if any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of

of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid; he shall forfeit 20*l*. *id.*

8. No licence shall authorize any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets. 31 *G.* 2. *c.* 32. *s.* 7. Unto what places the licence shall extend.

9. Persons in partnership and carrying on their trade or business in one house, shop, or tenement only; shall not be obliged to take out more than one licence in one year. 31 *G.* 2. *c.* 32. *s.* 7. Partners.

10. Prosecutions for offences may be in the courts at *Westminster*; or otherwise, if within the limits of the chief office of excise in *London*, the same may be before three commissioners of excise, and in case of appeal before the commissioners of appeal; and elsewhere, before two justices residing near to the place where the offence was committed. 31 *G.* 2. *c.* 32. *s.* 11. Prosecution for offences.

And the said commissioners of excise, and commissioners for appeals (in case of appeal), and justices respectively, shall upon complaint or information on oath summon the party accused; and upon his appearance or contempt, shall proceed to the examination of the fact; and on due proof made thereof by confession, or oath of one witness, shall give judgment; and issue warrants under their hands for levying the penalties by distress (if not redeemed in 14 days); and for want of sufficient distress, shall imprison the offender till satisfaction be made. *id.*

And they may mitigate the said penalties of 20*l*, as by the laws of excise. 32 *G.* 2. *c.* 24. *s.* 8.

Persons aggrieved may appeal to the next sessions. 31 *G.* 2. *c.* 32. *s.* 11.

11. All forfeitures (the necessary charges for the recovery thereof being first deducted) shall be distributed, half to the king, and half to him who shall inform or sue. 31 *G.* 2. *c.* 32. *s.* 12. Disposal of the forfeitures.

Exportation.

So much wrought plate shall be exported yearly, as shall be allowed by the commissioners of the customs or three of them. 9 & 10 *W.* *c.* 28. *s.* 1.

But no drawback shall be allowed on the exportation of silver plate. 31 *G.* 2. *c.* 32. *s.* 9.

For other regulations concerning plate, not relating to any of these duties, the reader may consult the statutes at

large mentioned under this head: And especially the 12 *G.* 2. *c.* 26.

XIII. *Salt.*

Officers of the salt duties.

1. The duties upon salt shall be under the management of the commissioners of excise. 5 *W. c.* 7. *s.* 5.

Or particular commissioners may be appointed; in which case they shall have the same power as commissioners of the excise. 1 *An. st.* 1. *c.* 21. *s.* 26.

And all collectors and other officers for ascertaining, collecting, or receiving the duty, shall be appointed under the hands and seals of the said commissioners. 5 *W. c.* 7. *s.* 5.

And no person shall act as chief commissioner until he shall before a baron of the exchequer take the oaths of allegiance and supremacy, and the oath following:

You shall swear to execute your office, truly and faithfully without favour or affection, and shall from time to time true account make and deliver to such person and persons as his majesty shall appoint to receive the same; and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint on that behalf: So help you God. 5 W. c. 7. s. 14.

And no person shall be capable of any office relating to the said duties (other than that of chief commissioner), until he shall before two commissioners, or two justices of the peace where he shall be appointed officer, take the said oaths of allegiance and supremacy, and the said last mentioned oath *mutatis mutandis.* 5 W. c. 7. s. 15.

British salt imported.

2. By the 2 & 3 *An. c.* 14. No salt of the produce of *Great Britain* shall be imported or landed in *England*; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein shall forfeit 20*l*, or be imprisoned six months. *s.* 1. (And by the 5 *G. c.* 18. *s.* 23. this is extended to salt shipped for exportation, and put on shore again, or taken out of the vessel.)

And the salt officers may at any time within two months, seize the salt, ship and tackle; and if the owner shall not in 20 days claim the same, and give security to answer the value, they shall be sold. *s.* 2.

But this shall not extend to salt shipped to be carried coastwise by certificate. *s.* 3.

Also, where salt entred for exportation, shall be forced into any port by weather, enemies, or other necessity, the owner or master may within 20 days reland the salt, so as entry be made, and the drawback repaid. *s.* 4.

Alſo, where a ſhip ſhall come in from any foreign part, having any ſalt on board, which was taken in only for proviſion of the ſhip; the maſter may land the ſame, ſo as entry be made in ten days, and the duty paid or ſecured as for foreign ſalt imported. *id.* 6. But if he ſhall not enter and pay, or ſecure the duty in ten days, and before it be landed, the ſame ſhall be forfeited; and the maſter, owner, or importer, ſhall forfeit double value. 5 *G. c.* 18. *ſ.* 18.

3. By the 5 *W. c.* 7. There ſhall be paid for every gallon of foreign ſalt imported, 3d over and above other duties. *ſ.* 3. Foreign ſalt imported.

And by the 9 & 10 *W. c.* 44. an additional duty is laid, of 7d a gallon. *ſ.* 3. The ſame amounting in the whole to 6s 8d a buſhel. 8 *G. c.* 4.

And by the 20 *G.* 3. *c.* 34. a further duty of 2½d a gallon; and if imported from Scotland, 7d a buſhel.

And by 22 *G.* 3. *c.* 39. a further duty of 2½ the gallon to be rated after eight gallons to the buſhel *Wincheſter* meaſure. 5 *W. c.* 7. *ſ.* 18.

And 84lb weight of foreign ſalt ſhall be deemed a buſhel. 1 *An. ſt.* 1. *c.* 21. *ſ.* 6.

Which ſaid duties ſhall be paid by the importer, on entry, and before landing; yet, on giving ſecurity to the collector, he ſhall have ſix months time for payment: But if he pay ready money, he ſhall have after the rate of 10l *per centum per annum* abated. 9 & 10 *W. c.* 44. *ſ.* 6.

And by the 5 *An. c.* 29. If the ſalt imported amounts in the whole to more than 40 buſhels, a further time is allowed for payment of the duties: in order to which, the ſalt ſhall on landing be weighed, cellared, and locked up in the preſence of a ſalt officer, under the cuſtody of the merchant or importer (who is to be at the charge of the cellarage or ſtorehouſe); and the merchant or importer may in preſence of a ſalt officer, and by warrant or permit under his hand and ſeal, have what quantity thereof his occaſions may require, not under 40 buſhels at a time; giving ſecurity for the duty of what quantity he receives, payable in ſix months; and if he ſhall pay ready money, he ſhall have after the rate of 10l. *per centum per annum* abated. *ſ.* 1, 3.

But if ſuch foreign ſalt imported, ſhall not on landing be ſecured as aforeſaid, it ſhall be liable to payment of duties, and to ſuch penalties for not paying or ſecuring the ſame, as if this act had not been made; and no ſalt ſo cellared and locked up ſhall be removed without notice

first given to the officer, and without a warrant or permit for conveying it; on pain of forfeiting such salt, and 10s a bushel, and also 20 l, to be recovered of the importer; and the carrier or person removing it, shall be also liable to the penalty of 10 s a bushel, and 20 l for every offence. *s.* 2.

And no foreign salt shall be imported in any ship or vessel of less burthen than 40 tuns, and in bulk only (except for the necessary provision of the ships); on pain of forfeiting the salt and double value thereof, to be recovered of the importer. 3 *G.* 2. *c.* 20. *s.* 18.

Landing salt before payment of the duty.

4. And if any salt be landed before entry made with the salt officer, or before the duty paid, or without a warrant for landing the same signed by the salt officer; it shall be forfeited, or the value, and also 10 s a bushel. 9 & 10 *W.* *c.* 44. *s.* 6. And moreover every person assisting therein, shall forfeit 100 l. 5 *G.* *c.* 18. *s.* 24.

Search on Shipboard.

5. And any officer of the salt duties or customs may go on board any vessel, to search if there be any salt on board, and may seize the same if it be found in any other vessel than that wherein it was brought into port, unless it had been entered, or the duty paid; and all such salt shall be forfeited, or the value thereof, to be recovered of the master or owner of the vessel, who shall also be liable to all other penalties as if the same had been landed without entry or payment of duties: and every person obstructing such officer, shall forfeit 40 l. 5 *G.* *c.* 18. *s.* 22.

Ships hovering near the coast.

6. And where any vessel, laden with salt, shall be found hovering on the coasts, the officers of the customs or salt duties may go on board and compel them to come into port, and may continue on board, till the salt shall be unladen, or the ship depart on her voyage: And if the persons on board such ship, or any other vessel importing salt, shall neglect or refuse to enter, or to unlade such salt, for 20 days after it is come into port, or within that time to depart on their voyage, unless permitted by the chief officer of the customs to stay longer; in such case all the salt on board shall be forfeited, and double value thereof, to be recovered of the master or commander of the vessel. 1 *An.* *st.* 1. *c.* 21. *s.* 7.

Duty on home salt.

7. By the 5 *W.* *c.* 7. a duty is laid on home salt of 1½d a gallon. *s.* 3.

Which by the 7 & 8 *W.* *c.* 31. is explained to extend to all salt made from rock salt, salt refined, or salt made from salt. *s.* 43.

And by the 9 & 10 *W.* *c.* 44. a further duty is imposed on all such salt, of 3½ d a gallon. *s.* 5. The same amounting in the whole to 3 s 4 d a bushel.

And

And by the 20 *G.* 3. *c.* 34. and 22 *G.* 3. *c.* 39. a further duty of $2\frac{1}{2}$ a gallon is charged on all ſalt and rock ſalt, made at any ſalt works or taken out of any pits.

For every 100 weight of all ſalts known by the name of *Glauber* or *Epſom* ſalt, made at any ſalt works, 20 s. 22 *G.* 3. *c.* 39.

For every ton of mineral *alkali* or flux for glaſs, made of any rock ſalt or from brine or ſea water, 20 s. And perſons making mineral alkali or flux for glaſs, ſhall pay 5 l annually for a licence to the commiſſioners of the ſalt duties. 22 *G.* 3. *c.* 39.

Rock ſalt ſhall be aſcertained, as to payment of the duties, at 65 lb weight to the buſhel. 1 *An. ſtat.* 1. *c.* 21. *ſ.* 9.

All other ſalt at 56 pounds to the buſhel. 9 & 10 *W.* *c.* 44. *ſ.* 34.

But by the 8 *G.* 3. *c.* 25. foul ſalt, called by the ſeveral names of grey or ſcrow ſalt, ſalt ſcale, ſand ſcale, or cruſtings, being produced in the manufacturing of white ſalt, and not fit to be applied to the curing of proviſions, but which may be beneficial in agriculture, ſhall be charged only with a duty of 4 d a buſhel. And if any perſon, after it has been removed from the works, ſhall uſe the ſame otherwiſe than for the manuring of land he ſhall forfeit 60 l, one third to the king, and two thirds to the informer, to be levied in like manner, and with like power of mitigation, as by the laws of exciſe, or in the courts at *Weſtminſter*.

And no perſon ſhall remove the ſame without notice to an officer, and without having been firſt mixed with ſoot, in the proportion of two buſhels of ſoot to 100 buſhels of ſuch ſalt. 22 *G.* 3. *c.* 39.

8. Where any rock ſalt for which the duties ſhall have been paid or ſecured, ſhall be melted and refined; the perſon who ſhall refine it into white ſalt, ſhall have an abatement out of the duty of the ſaid white ſalt, of ſo much as was charged on the ſaid rock ſo melted and refined; ſo as the rock ſo refined were before the melting thereof weighed in the preſence of the officer; and ſo as oath be firſt made before a juſtice near adjoining, of the particular quantity of rock ſalt by ſuch refiner imployed in making the ſaid white ſalt, and that he or any other perſon by his privity did not increaſe the ſaid rock ſalt by mixing or other undue practice, and that no former allowance for the ſaid rock ſalt had been made to his uſe; and ſo as due proof be made upon oath or otherwiſe, that the duties for the ſaid rock ſalt ſo refined were paid or ſecured. 10 & 11 *W.* *c.* 22. *ſ.* 6. Drawback on rock ſalt refined.

And no rock ſalt ſhall be refined or made into white ſalt in any place except within ten miles of the pit, or at ſuch places as were uſed for refining rock ſalt before *May* 10, 1702, on pain of 40 s a buſhel. 1 *An. ſt.* 1. *c.* 21. *ſ.* 10.

Entry of ſalt works and pits.

9. Every maker of ſalt, refiner of rock ſalt, and proprietor of any ſalt works or pits, who ſhall ſet up or uſe any ſalt work, ſalt pit, ſalt pan, ſtorehouſe, warehouſe, or other place, for the making, laying, refining, or keeping of ſalt, or rock ſalt, without giving notice thereof at the next ſalt office; ſhall forfeit 40 l. 1 *An. ſt.* 1. *c.* 21. *ſ.* 1.

Officer to enter and ſurvey.

10. And if any ſalt maker, importer of ſalt, or refiner or proprietor of rock ſalt, ſhall on requeſt or demand made, in the day time, or in the night in preſence of a conſtable, refuſe to permit the officer to enter and come into his works, warehouſe, ſtorehouſe, or other place for making, laying, refining, or keeping of ſalt; he ſhall forfeit 40 l. 1 *An. ſt.* 1. *c.* 21. *ſ.* 2.

Obſtructing the officer.

11. And, generally, if any perſon ſhall obſtruct any officer in the execution of his office, or of the powers given him by any law relating to the ſalt duties; he ſhall forfeit 20 l: and for nonpayment, and in default of diſtreſs, he may be committed to the houſe of correction, to be whipt and kept to hard labour for any time not exceeding one month. 1 *An. ſt.* 1. *c.* 21. *ſ.* 4.

Removing ſalt without notice and entry.

12. No ſalt ſhall be delivered from any ſalt works or pits, without notice firſt given to the officer; on pain of forfeiture of the ſalt ſo delivered, and of 20 l, by the owner of the works or pits. 5 *W.* *c.* 7. *ſ.* 19.

And by the 9 & 10 *W.* *c.* 44. No ſalt ſhall be delivered from any ſalt works or pits, without notice given to the officer; on pain of the owner forfeiting the ſame, and 10 s a buſhel. *ſ.* 26.

And if any *officer* ſhall deliver, or be conſenting or privy to the delivering, removing, or conveying, Britiſh white ſalt, refined ſalt, rock ſalt, or ſalt rock, from any ſalt work, crib, ſtorehouſe, warehouſe, or other place made uſe of for making, refining, or keeping of any ſuch ſalt; or from any ſalt pit; or to the landing any foreign ſalt out of any veſſel importing the ſame from beyond the ſeas; before the ſame be duly entred and charged in the book kept for that purpoſe; he ſhall forfeit, over and above the penalty of his bond entred into for the due performance of the truſt repoſed in him, double the value of ſuch ſalt, and alſo 10 s a buſhel. 5 *G.* 3. *c.* 43. *ſ.* 40.

13. The

13. The collector shall provide at every salt work or pit, a sufficient beam, scales, and weights, or stilyard, and shall have liberty to fix the same, for weighing the salt that shall be delivered from thence; and one or more persons living near, shall be admitted and sworn to the true weighing of such salt, before one justice near adjoining, without fee; and he shall be paid by the collector or officer for the duties. 7 & 8 *W.* *c.* 31. *s.* 46. Scales and weights.

14. Every owner of any rock pit, who shall take any rock salt out of such pit, shall before the removal thereof, cause the same to be weighed in the presence of the salt officer, who shall attend at all reasonable hours in the day time to see it weighed, and take an account and make return thereof in writing under his hand to the commissioners of excise, or whom they shall appoint, leaving a true copy under his hand with the proprietor: and if the proprietor refuse to weigh it in presence of the officer when taken out of the pit, or suffer any rock salt to be removed from the pit before it hath been weighed; he shall forfeit 20*l*, and double value. 10 & 11 *W.* *c.* 22. *s.* 3. Weighing.

15. All makers and proprietors of salt shall make entries with the salt officers of the quantity by them made and delivered, or imported; and shall have a warrant under the hand and seal of an officer, impowering them to carry away the same, before it shall be removed, which warrant the officer shall give on paying or securing the duties (in nine months, 5 *An.* *c.* 29. *s.* 5.) But if any person at the time of entry shall pay ready money, he shall have after the rate of ten *per centum per annum* allowed. 5 *W.* *c.* 7. *s.* 6. Entry of salt made.

16. And the proprietor of rock pits shall clear off the duties of all rock salt, in two days after the charge made by the officer, or within the said two days give security to pay the same (in twelve months, 5 *Ann.* *c.* 29. *s.* 5.); on pain of double value of the duties: But if he shall pay within the two days, he shall be allowed after the rate of 10*l* *per centum per annum*, for the said twelve months. 10 & 11 *W.* *c.* 22. *s.* 4, 5. Payment of the duties.

17. And persons giving security for payment of the duties, may at any time within 28 days after giving the same, pay the duty, and shall have a discount after 10*l* *per centum per annum* for the remainder of the time. 1 *An.* *st.* 1. *c.* 21. *s.* 29. Discount on payment.

18. But the owners of rock salt, may remove it out of the pits, or warehouses adjoining or belonging to such pits, into their other warehouses or places for storing How far rock salt may be removed, with the duty unpaid.

thereof, for convenience of selling or shipping after entry made, and a warrant taken for the same from the next officer; and shall not be obliged to pay or secure the duty on such removal. 5 *W. c.* 7. *s.* 22.

Salt carried without a permit.

19. The officers may seize all salt carried before entry, without a permit, and the same shall be brought to the next office; and if it shall not be claimed by the owner or one deputed under his hand, in ten days, it shall be forfeited and sold the next general day of sale: And if it be claimed in ten days, and the claimer doth not make it appear by the oath of one witness that it had been duly entred, and a warrant obtained for removing it, it shall likewise be forfeited: And every person who shall carry or cause it to be carried before such entry and warrant, shall forfeit double the value. 5 *W. c.* 7. *s.* 7. And also 10*s* a bushel. 9 & 10 *W. c.* 44. *s.* 12.

And by the 1 *An. st.* 1. *c.* 21. If any salt carrier, or other person, shall remove any salt from any salt works, or place thereunto belonging, without entry and payment of the duties or securing the same, or without a permit; the officers may not only seize the salt, but also apprehend the offender, and if he shall not on conviction pay the penalties, and no sufficient distress can be found, he may be committed to the house of correction to be whipt and kept to hard labour for any time not exceeding one month. *s.* 4.

And by the 2 & 3 *Ann. c.* 14. The carrier who shall carry any salt without a permit, shall forfeit 20 *l. s.* 8.

Salt found unentred.

20. And every person in whose possession any salt shall be found, near the salt works or sea coasts which hath not been entred, and the duty paid or secured; shall if it be foreign salt, be liable to such penalties, as if he had landed the same without entry or payment of duties; and if it be *English* salt, he shall be liable to to such penalties, as if he had removed it from the salt works without entry or payment of duties, and without a permit; unless he shall make it appear, that he bought it of a maker, retailer, or importer of salt, and of whom. 1 *An. st.* 1. *c.* 21. *s.* 3.

Several permits to be delivered with several parcels.

21. The salt officer shall deliver *gratis* and without delay, so many several permits to each carrier of salt, as he shall demand for such several horse loads of salt as he shall load at one time, and at one salt work. 7 & 8 *W. c.* 31. *s.* 47.

Officer may demand sight of the permit.

22. The officer, where he shall meet with any person carrying salt, by day or night, by land or water, may demand a sight of the permit; and if he shall suspect that

that there is more ſalt than is expreſſed in the permit, he may at his own expence re-weigh the ſame; and if the ſalt on re-weighing ſhall be found to be more in weight than is contained in the permit, the ſurpluſage ſhall be forfeited; and the perſon or perſons concerned in carrying the ſame, ſhall be liable to the penalties and forfeitures as perſons carrying ſalt without payment of the duties. 5 *G.* 3. *c.* 43. *ſ.* 42.

Prices of ſalt.

23. The lord mayor and aldermen in *London*, and the juſtices of the peace in the country at their general ſeſſions, may ſet and publiſh in writing the prices of ſalt, and alter the ſame as there ſhall be occaſion: and perſons refuſing to ſell at ſuch price, or ſelling at a higher price, ſhall forfeit 5 l, half to the king, and half to the informer, by diſtreſs, by warrant of the lord mayor or any ſuch juſtice; and in default of ſufficient diſtreſs, to be impriſoned till paid. 7 & 8 *W.* *c.* 31. *ſ.* 92.

Salt to be ſold by weight.

24. By the 9 & 10 *W.* *c.* 6. No perſon dealing in ſalt, ſhall *ſell* it otherwiſe than by weight, after the rate of 56 pounds to the buſhel; on pain of 5 l, to the informer; to be determined by two juſtices reſiding near: And the party grieved may appeal to the next ſeſſions. And the ſaid juſtices ſhall on complaint ſummon the party accuſed, and on appearance or contempt examine the matter, and on proof by the oath of two witneſſes, or confeſſion, give judgment, and ſhall iſſue their warrant to levy the ſame by diſtreſs, and cauſe ſale thereof to be made, if not redeemed in ſix days, rendring the overplus, and for want of ſufficient diſtreſs, ſhall impriſon the offender till ſatisfaction is made.

And no perſon ſhall *buy* ſalt otherwiſe than by weight, and not by meaſure; on pain of 10 s a buſhel, and ſo proportionably. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 28.

Carrying coaſtwiſe.

25. No retailer or ſhopkeeper ſhall ſhip any ſalt to be ſent to any port within the kingdom, before he hath made it appear by oath or otherwiſe, before the commiſſioners or a ſalt officer, that the duty is paid or ſecured, or that it was bought of ſome other retailer or ſhopkeeper that hath paid the duty. 5 *W.* *c.* 7. *ſ.* 8.

And all ſalt to be put on ſhipboard, ſhall be weighed at the place where taken on board; and none ſhall be carried on board before it is weighed, and a permit containing the quantity is obtained; on pain of forfeiture, and 10 s a buſhel: But if the officer ſhall not attend to weigh it, or refuſe to give a permit, it may be carried on board without incurring any penalty. 10 & 11 *W.* *c.* 22. *ſ.* 10, 11.

And where any ſalt ſhall be laid on ſhipboard, the officer of the cuſtoms where it ſhall be laden, ſhall in the cocquet (which cocquet ſhall be alſo ſigned by the ſalt officer) expreſs the quantity: And if ſuch ſhip ſhall come into any port, the officers of the cuſtoms or of the ſalt duties may go on board and demand a ſight of the cocquet, and if any ſuch officer ſhall have juſt cauſe to ſuſpect, that there is not ſo much ſalt on board as the quantity expreſſed in the cocquet, and ſhall make affidavit thereof, before the collector or cuſtomer of the port, or perſon executing either of their offices; he may weigh all the ſalt on board; and if there ſhall not be ſo much as the cocquet expreſſeth (making allowance for waſte) the ſalt remaining ſhall be forfeited. 1 *An. ſt.* 1. *c.* 21. *ſ.* 13.

And perſons ſhipping ſalt to be carried coaſtwiſe, the duties for which have been paid or ſecured, ſhall have an allowance for waſte after the rate of three buſhels for every 40 buſhels of white ſalt, and after the rate of a buſhel and a half for every 40 buſhels of rock ſalt; which allowance ſhall be made but once for the ſame ſalt, altho' it be carried from ſeveral ports coaſtwiſe. 5 *An. c.* 29. *ſ.* 4. 6 *An. c.* 12. *ſ.* 1.

And every commander of any veſſel that ſhall carry ſalt from one port to another within the kingdom, ſhall (before he hath a warrant for landing it) deliver to the ſalt officers in the port of landing, a true particular of the quantity, ſigned by the ſalt and cuſtom houſe officers of the port from whence he came; and then the maſter, mate, or boatſwain, ſhall make oath before ſome of the commiſſioners or their officers, that to his knowledge there hath not been laid on board any ſalt ſince he came from ſuch port. And if the veſſel be to deliver one part of the ſalt at one port, and another part at another port, then the officers for the ſalt and cuſtoms, where part of the ſalt ſhall be delivered, ſhall certify on the back of the warrant, or by certificate alone, under their hand and ſeals, how much of the ſalt hath been there landed, on pain of forfeiting double the value of the ſalt that ſhall be otherwiſe delivered. 5 *W. c.* 7. *ſ.* 9. And likewiſe 10 *s* a buſhel. 9 & 10 *W. c.* 44. *ſ.* 12.

And the officer at the unlading port may go on board the ſhip, and demand a ſight of the permit, and weigh the ſalt upon unlading; and if it be more in weight than is contained in the permit, the ſurpluſage ſhall be forfeited. And if the maſter of the ſhip ſhall refuſe to ſhew the permit, the officer may ſeize and detain the ſalt till it be produced.

duced. And if he do not produce it in four days after ſeizure, the ſalt ſhall be forfeited. 10 & 11 *W.* *c.* 22. *ſ.* 12, 13.

On reſhipping any ſalt from any boat, barge or other veſſel, and before any diſpatches be granted for the ſalt ſo reſhipped, the maſter, mate, or chief boatman, ſhall make oath before the ſalt officer, that all the ſalt taken in at the place of lading is reſhipped on board ſuch veſſel, and that no ſalt hath been added to it or taken from it, to the beſt of his knowledge and belief; on pain of forfeiting double the value of the ſalt that ſhall be otherwiſe reſhipped, and likewiſe 10s a buſhel. 5 *G.* *c.* 18. *ſ.* 25.

And where any ſubject hath ſhipped ſalt that hath paid duty, in order to be conveyed to ſome part of *England*, and any of it is loſt at ſea (or in any port, harbour, or river, 8 *Geo.* *c.* 4. *ſ.* 11.) by ſtorm, or being thrown overboard for preſerving mens lives or the veſſel (or by ſinking of the ſhip, or be taken by enemies, 9 & 10 *W.* *c.* 44. 2 & 3 *An.* *c.* 14); in ſuch caſe, the merchant or owner of the ſalt ſhall, on proof made by the oath of two witneſſes, whereof the maſter or mate ſhall be one, at the quarter ſeſſions where he ſhall inhabit, of the loſs of ſuch ſalt, and that the ſame was not occaſioned by any leakage of the ſhip, or any negligence or default of the maſter or mariners, receive from the ſaid ſeſſions a certificate that ſuch proof was made before them; and on producing the certificate to the ſalt officer he ſhall let him buy the like quantity duty free. 2 & 3 *An.* *c.* 14. *ſ.* 18. Which certificate ſhall alſo vacate the ſecurity given for payment of the duties. 26 *G.* 2. *c.* 32. *ſ.* 6.

Exportation.

26. When any ſalt ſhall be entred to be put on board, and the duty paid or ſecured; the officer ſhall, on due notice, by himſelf, or deputy, between ſun riſing and ſetting, attend the weighing it out, without loſs of time; on pain of 40s. 9 & 10 *W.* *c.* 6. *ſ.* 3.

And the ſalt officers may go aboard all ſhips exporting ſalt, and continue, and take an account thereof; and if any perſon ſhall obſtruct any ſuch officer, he ſhall forfeit 20l. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 15.

And there ſhall be a drawback of the duties on ſalt exported. 5 *W.* *c.* 7. *ſ.* 11. 10 & 11 *W.* *c.* 22. *ſ.* 7. 5 *An.* *c.* 29. *ſ.* 16.

Moreover there ſhall be an allowance of four buſhels for every 40 buſhels of white ſalt, and of two for every 40 buſhels of rock ſalt, exported to *Ireland*; for the waſte in carriage. 5 *An.* *c.* 29. *ſ.* 14.

And if any ſalt, for which the duty hath been repaid on exportation, ſhall be landed again before the duty be

again

again paid and entry made, and other things performed, as in caſe of foreign ſalt imported; the offender ſhall forfeit double value, and 10 s a buſhel, and the other penalties for foreign ſalt landed unentred. 9 & 10 *W.* *c.* 44. *ſ.* 27. 5 *W.* *c.* 7. *ſ.* 20.

And if any ſhip laden with ſalt exported, ſhall by ſtreſs of weather or otherwiſe be drove into any port, the ſalt officer may come on board, and continue till the ſhip ſhall unlade her cargo, or return to ſea; on pain of 20 l, to be recovered of the maſter who ſhall refuſe the officer to come or continue on board. And if any part of the ſalt ſhall be put on ſhore, without entry or repayment of the duty; the ſaid ſalt, and alſo the whole cargo of ſalt in the ſhip, ſhall be forfeited. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 12.

And where any ſalt, for which the duties ſhall have been paid or ſecured, ſhall be ſhipped in order to be exported, and the ſame ſhall periſh by ſinking of the ſhip in the port, before the exporter ſhall be intitled to a drawback; the exporter or proprietor ſhall on proof made at the next ſeſſions, to be held next to the place where it ſhall ſo periſh, of the loſs of ſuch ſalt, receive from the ſaid ſeſſions a certificate, that ſuch proof was made before them; and on producing the certificate to the collector of the ſalt duties, he ſhall let ſuch perſon buy the like quantity duty free. 2 & 3 *An.* *c.* 14. *ſ.* 10.

And where any ſalt ſhall be ſhipped in order for exportation to *Ireland*, and it ſhall periſh by ſinking of the ſhip, or be taken by enemies; the exporter or proprietor ſhall, on proof made at the quarter ſeſſions for the place from whence it was exported, of the loſs of ſuch ſalt, receive from the ſaid ſeſſions a certificate, that ſuch proof was made before them; and on producing the certificate to the officer of the place where the duty hath been paid or ſecured, the ſecurity ſhall be diſcharged, and the money repaid. 4 *An.* *c.* 12. *ſ.* 11. 9 *An.* *c.* 23. *ſ.* 46. Proof to be made in two years. 26 *G.* 2. *c.* 32. *ſ.* 7.

Salt for curing of fiſh.

27. The curers of fiſh for exportation may import foreign ſalt or take from the pit or work *Britiſh* ſalt (or rock ſalt refined, 8 *G.* *c.* 16. *ſ.* 6. for curing fiſh for exportation, without duty, except the cuſtoms on importation; ſuch foreign ſalt being landed, and ſuch *Britiſh* ſalt being taken from the pits or works, and weighed, in the preſence of an officer, and being lodged in a warehouſe, under a lock both of the officer and proprietor; which ſhall remain there during the ſeveral intervals of the fiſhing ſeaſon. 5 *G.* *c.* 18. *ſ.* 1.

And any perſon who ſhall imbezil any foreign ſalt after importation, and before cellaring, ſhall forfeit 20 s a buſhel;

buſhel; and any perſon who ſhall imbezil any *Britiſh* ſalt, after weighing at the pits or works, and before cellaring, ſhall forfeit 10 s a buſhel. 5 *G. c.* 18. *ſ.* 4.

The proprietor ſhall enter at the next office the quantity ſo by him lodged; and the officer ſhall keep an account of the quantity in his cuſtody. 5 *G. c.* 18. *ſ.* 1.

And at the beginning of the fiſhing ſeaſon, the proprietor or his agent ſhall make oath in writing before an officer at the next office, declaring the quantity ſo lodged, and that it is all intended for curing of fiſh for exportation only, and ſhall not by his conſent be delivered but for the ſaid purpoſe; after which oath ſo made and filed, the officer in whoſe cuſtody the ſalt hath continued during the interval of the fiſhing ſeaſon, ſhall deliver all the ſaid ſalt into the ſole cuſtody of the proprietor. 5 *G. c.* 18. *ſ.* 1.

And in the caſe of herrings or pilchards to be cured for exportation, the proprietor of ſuch ſalt delivered duty free, or his agent, ſhall inſtead of the ſaid oath, make oath in writing at the next ſalt office, declaring the quantity of the foreign or *Britiſh* ſalt reſpectively lodged for curing of fiſh, and that it is intended for the curing of fiſh for exportation only, and ſhall not by his conſent be delivered but for that purpoſe, except ſo much thereof as ſhall be uſed for curing ſuch red or white herrings or pilchards as ſhall be entred for home conſumption, and charged with the duties by the ſeveral acts reſpectively chargeable thereupon. 8 *G. c.* 4. 8 *G. c.* 16. 19 *G.* 3. *c.* 52.

And no foreign ſalt ſhall be delivered over from the joint cuſtody of the officer and proprietor, into the ſole cuſtody of the proprietor or his agent, for curing fiſh for exportation; except he give ſecurity to the ſatisfaction of the chief officer of the ſalt duty in the port, that he will account for the foreign ſalt ſo by him received, or anſwer the penalties. 8 *G.* 2. *c.* 12. *ſ.* 3.

And for every buſhel of ſalt ſo lodged, which ſhall be either carried away, or found wanting at the redelivering thereof into the ſole cuſtody of the proprietor, reaſonable allowance for waſte being firſt made; the proprietor ſhall forfeit 20 s. 5 *G. c.* 18. *ſ.* 3.

And at the end of every fiſhing ſeaſon, the officer ſhall take an account of the quantity remaining in hand, which ſhall be locked up as aforeſaid; and the proprietor ſhall (within three months after the expiration of each year, 8 *G. c.* 4. *ſ.* 10.) deliver an account in writing into the office, containing the quantity of fiſh exported or entred for exportation, on which the ſalt hath been uſed; together

ther with a certificate from the officer where it is ſhipped for exportation, verifying the account; which account ſhall be alſo affirmed by the oath of the proprietor or his agent, and remain in the office; and if any of the ſalt ſhall be delivered over to any other perſon, and uſed by him in curing of fiſh, that alſo ſhall be expreſſed in the account, and ſuch perſon ſhall in like manner make another account of all the ſalt uſed by him: And if any ſuch perſon ſhall neglect or refuſe to deliver ſuch account within the ſaid time; he ſhall forfeit 40 l. 5 *G. c.* 18. *ſ.* 1.

And if the proprietor of ſuch ſalt ſo delivered over, ſhall not make it appear by oath or otherwiſe to the proper officer, that ſuch ſalt ſo delivered over was uſed for curing of fiſh; he ſhall be deemed guilty of embeziling it, and forfeit 50 l. 11 *G. c.* 30. *ſ.* 41.

Alſo the ſaid account ſhall expreſs the quantity of red or white herrings entred for home conſumption, on which ſuch ſalt hath been uſed. 8 *G. c.* 4. *ſ.* 3. 8 *G. c.* 16. *ſ.* 3.

And for every buſhel of ſalt, ſo taken out of the cellar or ſalt works, which ſhall not be ſo accounted for by ſuch oath and certificate; or by certificate from the quarter ſeſſions, that proof was there made, that ſuch ſalt was put on board for curing fiſh at ſea, and was there taken by enemies, or otherwiſe loſt at ſea; or ſhall not be returned into, or found remaining in the cellar or warehouſe; the owner or other perſon ſtanding accountable for the ſame, ſhall forfeit 20 s. And the proprietor or his agent ſelling, giving away, uſing or delivering any ſuch ſalt otherwiſe than for the purpoſes aforeſaid; ſhall forfeit 20 s a buſhel: And every perſon buying or receiving the ſame, ſhall forfeit alſo 20 s a buſhel: And in default of payment in 14 days after conviction, and where no ſufficient effects can be found to anſwer the ſame, he ſhall be ſent to the houſe of correction, to be whipped and kept to hard labour, not exceeding three months. 5 *G. c.* 18. *ſ.* 2.

For every caſk of pilchards or ſcads exported, containing 50 gallons, ſhall be paid by the ſalt officer an allowance of 7 s; for every hundred of cod fiſh, ling, or hake (except dried ones called haberdines) of 14 inches long, from the bone in the fin to the third joint in the tail, 5 s; for every barrel of wet cod fiſh, ling, or hake, of 32 gallons, 2 s; for every hundred weight of haberdines 3 s; for every barrel of ſalmon of 42 gallons 4 s 6 d; for every barrel of white herrings of 32 gallons 2 s 8 d; for every barrel of full red herrings of 32 gallons 1 s 9 d; for every barrel of clean ſhotten herrings of 32 gallons 1 s; for every laſt of dried red ſprats 1 s. And the officers

officers ſhall cut off part of the tail of the codfiſh, ling and hake; and mark the caſks of the other fiſh, that it may be known that they have once had the allowance. 5 *G. c.* 18. *ſ.* 6.

And the maker or curer of red herrings, before he remove them (except for exportation) from the place of curing, ſhall make entry thereof at the next ſalt office, and pay 1 s 8 d a thouſand. And if they be packed up in caſks, the number ſhall be marked on the head; and a permit ſhall be given by the ſalt officer, expreſſing the number, and the mark and number of the caſks, and for what place they are intended, and whether to be ſent by land or water; on pain of forfeiting all the red herrings removed otherwiſe, and alſo 40 s a thouſand. 8 *G. c.* 4. *ſ.* 2. And as the duties on ſalt ſhall riſe or fall, the 1 s 8 d a thouſand ſhall riſe and fall proportionably. *ſ.* 5.

And the maker or curer of white herrings, before he remove them (except for exportation) from the place of curing, ſhall make entry thereof at the next ſalt office, and pay 3 s 4 d a barrel; and the caſk ſhall be marked on the head, ſhewing the contents: then a permit ſhall be given by the ſalt officer, expreſſing the quantity, and mark and number of the caſks, and for what place they are intended, and whether to be ſent by land or water; on pain of forfeiting all the white herrings removed otherwiſe, with the caſks, and alſo 40 s a caſk. 8 *G. c.* 16. *ſ.* 2.

And the curer of pilchards, before he remove them (except for exportation) from the place of curing, ſhall make entry thereof at the next ſalt office, and pay 5 s 2 d ½ for every caſk containing 50 gallons, and ſo in proportion; and no curer ſhall ſell a leſs quantity than 25 gallons at one time; and ſuch pilchards ſhall be put up in caſks containing not leſs than 25 gallons each; and the contents of ſuch caſks ſhall be marked on the head by the proper officer; then a permit ſhall be given by the ſalt officer, expreſſing the contents of the caſks, and the marks, and for what place they are intended, and whether to be ſent by land or water: on pain of forfeiting all the pilchards ſold in leſs quantities, or removed otherwiſe than is above directed, and the caſks, and alſo 40 s for every 25 gallons. 19 *G.* 3. *c.* 52. *ſ.* 3.

And no retailer of pilchards ſhall at any one time buy a leſs quantity than 25 gallons: and he ſhall be obliged, upon demand of an officer of the cuſtoms or exciſe, to diſcover the name and place of abode of the curer or vendor; on pain of forfeiting the quantity of pilchards ſo purchaſed or concerning which ſuch demand ſhall be made, and the caſks, and alſo the ſum of 40 s. *ſ.* 4.

And

And the proprietors, at the end of the ſeaſon, in their account as aforeſaid, ſhall expreſs alſo the quantity of pilchards entred for home conſumption. *ſ.* 5.

And the officers at all times in the day, or in the night in preſence of a conſtable, may enter into the cellars and warehouſes, and inſpect the curing of the fiſh, and gage the ſalt, and mark the caſks, and ſee them exported; and if any perſon ſhall obſtruct them, he ſhall forfeit 20 l. 5 *G. c.* 18. *ſ.* 7.

No herrings, pilchards, ſcads, codfiſh, ling, hake, ſalmon, or dried red ſprats, ſhall after they be put on board any boat or veſſel, in order to be exported, be taken out thereof, otherwiſe than to put the fiſh into the ſhips in which they are to be exported, nor put on ſhore but in the preſence of a ſalt officer; on pain that the ſame ſhall be forfeited, and alſo the ſhip and tackle; and every perſon aſſiſting therein, ſhall forfeit 20 l, or be impriſoned ſix months. 5 *G. c.* 18. *ſ.* 23. 2 & 3 *An. c.* 14. *ſ.* 13.

If the ſaid fiſh ſhall not be exported, for want of an opportunity, while they are good and merchantable; the owner may cauſe them to be deſtroyed in the preſence of an officer; and the officer's certificate that they were deſtroyed, ſhall be admitted to veriſy the account. 8 *G. c.* 4. *ſ.* 4.

Note, By the 1 *An. ſt.* 1. *c.* 21. no perſon ſhall cure or pack pilchards, for ſale, unleſs he be owner or part owner of a ſeyn or drift net, or have the conſent of ſuch owner in writing, and that on each caſk or hogſhead the word *ſeyn* or *drift* ſhall be burnt with an iron, together with the name and ſurname of the owner, and the number of pilchards; on pain of double value. *ſ.* 31.

Salt for curing of beef and pork.

28. For every barrel of ſalted beef or pork exported for ſale, there ſhall be allowed 5 s a barrel, to be paid by the ſalt officer in 30 days after demand, on a debenture to be prepared by the collector of the cuſtoms, and verified by the ſearcher as to the quantity, and that it is good and merchantable: and the oath of the exporter or agent ſhall be firſt taken before the principal officers of the port, that it was ſalted with ſalt for which the duties have been paid and not drawn back, and that it is really exported for ſale, and that no part thereof was ſpent nor intended to be ſpent for the ſhip's uſe, and not intended to be relanded; and the ſalt officers, on exportation of beef or pork, may mark the barrel or veſſel, that it may be known to have been exported. 5 *An. c.* 29. *ſ.* 8.

And if any ſuch beef or pork ſhall be relanded, it ſhall be forfeited, and alſo 40 s a barrel; to be recovered of the importer or proprietor. *ſ.* 9.

29. No

29. No person shall use any brine before it is boiled into salt, or any rock salt before it is refined into white salt for pickling or curing of flesh or fish, or preserving any provisions; on pain of 40 s for every gallon of brine, or pound of rock salt. 1 *An. st.* 1. *c.* 21. *s.* 5. Using brine or rock salt for curing of flesh or fish.

And every person who shall carry any brine from the salt pits (other than the known proprietors of pans for boiling it into white salt) shall likewise forfeit 40s a gallon. 5 *G. c.* 18. *s.* 17.

30. Where salt shall be shipped on board any boat, barge, or other vessel, in order to be carried down any river, or to be carried coastwise, for the purposes of the fishery, or to be reshipped for exportation, or otherwise, and the same or any part thereof shall be landed without the presence of an officer; all such salt so landed shall be forfeited, and also 10 s a bushel; to be recovered of the owner of the vessel; and also the vessel shall be forfeited, together with the furniture; and every person that shall take any salt out of such vessel, or carry the same on shore, or convey the same from the shore when landed, or shall be assisting therein, shall forfeit 20 l. 5 *G.* 3. *c.* 43. *s.* 41. Salt relanded from boats or other vessels.

31. All penalties and forfeitures given by any act relating to the duties upon salt (except where it is herein otherwise directed) shall be employed, half to the use of the king, and half to him who shall seize or inform, to be recovered in such manner, and with such power of mitigation, as any forfeiture may be by any law of excise; or in the courts at *Westminster*: And every such officer may seize all salt and other things, which by any law relating to the duties on salt are declared to be forfeited. 5 *G. c.* 18. *s.* 26. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

And by the 5 *G.* 3. *c.* 43. In all cases, where salt or fish of any kind shall be liable to seizure, by virtue of this or any former act; the bags, sacks, casks, or other package, and also the carriages, horses, and other cattle, made use of in carrying the same, shall be forfeited, and may be seized accordingly. *s.* 45.

32. And if any person is aggrieved by an order of two justices relating to the duties upon salt, or to any forfeiture or offence concerning the same; he may appeal to the next quarter sessions. 10 & 11 *W. c.* 22. *s.* 9. Appeal.

33. But no dealer in salt shall act as a justice of the peace in any matter relating to the duties upon salt; and if there shall not be a sufficient number of justices in any corporation, not dealers in salt, the justices of the county shall have power to act therein. 1 *An. st.* 1. *c.* 21. *s.* 18. Dealer in salt not to act as a justice.

34. If any salt, as well British as foreign rock salt, or salt refined from rock salt, or red or white herrings, or any other Proof to lie on the claimer, and not on the officer.

other ſort of fiſh, be ſeized for non-payment of duties, or any other cauſe of forfeiture, by any of the laws relating to the duties on ſalt or fiſh now in force; and any diſpute ſhall ariſe, whether the ſame had been duly entred, and the duties paid or ſecured; or that ſuch ſalt or fiſh had been legally condemned; or that the ſalt had been duly entred and locked up for the fiſhery; or that the quantity of ſalt uſed in the curing of fiſh, as ſet forth in the curer's account, was uſed: the proof ſhall lie on the owner or claimer of ſuch ſalt or herrings, or the curer of fiſh, and not on the officer. 5 *G.* 3. *c.* 43. *ſ.* 44.

XIV. Servants.

By the 17 *G.* 3. *c.* 39. certain duties were laid upon ſervants, and by the ſame act and the 19 *G.* 3. *c.* 59. divers regulations were made for the recovering the ſaid duties; which regulations having been found ineffectual, the ſtatute of the 21 *G.* 3. *c.* 31. repeals ſo much of the ſaid acts as relates to the ſeveral powers, rules, and regulations preſcribed thereby, for aſcertaining, ſecuring, and paying the ſaid duties. And the whole taken together ſeems to ſtand as followeth:

For what ſervants.

1. There ſhall be paid 21 s yearly, for every male ſervant, who ſhall be retained or employed in any of the following capacities, that is to ſay, of maitre d' hotel, houſe ſteward, maſter of the horſe, groom of the chamber, valet de chambre, butler, under butler, clerk of the kitchen, confectioner, cook, houſe porter, footman, running footman, coachman, groom, poſtillion, ſtable-boy, and the reſpective helpers in the ſtables of ſuch coachman, groom, or poſtillion, or in the capacity of gardener (not being a day labourer), park-keeper, game-keeper, huntſman, whipper-in; whether ſuch male ſervants be retained or employed in one or more of the ſaid capacities, or in any other buſineſs jointly with one or more of the ſaid capacities of a ſervant. 17 *G.* 3. *c.* 39. *ſ.* 1.

Provided, that this ſhall not extend to any butler, manciple, cook, gardener, or porter of any college or hall in either of the univerſities, or of the colleges of Weſtminſter, Eton, or Wincheſter; nor to the hoſpitals of Chriſt, St. Bartholomew, Bridewell, Bethlehem, St. Thomas, or Guy's, or the Foundling Hoſpital. *ſ.* 5, 6.

Nor to the ſervants of his majeſty or any of the royal family, or of any ambaſſador or foreign miniſter reſiding in this kingdom. *ſ.* 8.

Provided alſo, that this ſhall not extend to any ſervant retained or employed *bona fide* for the purpoſes of huſbandry

dry or manufactures, or of any trade or calling by which the master or mistress earns a livelihood or profit. *s.* 2.

But this shall not exempt any person from payment of the duty, in respect of any servant retained or employed in any of the capacities aforesaid, on account or under pretence that such servant is bound as an apprentice to such person; except such as shall be imposed on any master or mistress by the magistrates and parish officers, so as such number so imposed doth not exceed two. *s.* 4.

2. Which said sum shall be charged on the master or mistress of every such servant retained or employed by him or her. 17 *G.* 3. *c.* 39. *s.* 1. By whom to be paid.

Provided, that the duty for coachmen, grooms, postillions, and helpers, let out to hire by way of jobb, shall be paid by the master for whose use and in whose service they shall be employed. *s.* 3.

And the duty granted for every gardener retained or employed by any person or persons who shall contract for the keeping of any garden or gardens, shall be paid by the person or persons for whose use and in whose garden such gardener shall be employed. *id.*

3. The same to be under the receipt and management of the commissioners and officers of excise, who shall appoint proper officers for collecting and receiving the same. 21 *G.* 3. *c.* 31. *s* 2. How to be levied.

4. In order whereunto, every person, who on May 21 yearly shall retain or employ, or after the said 21st of May shall begin to retain or employ, any male servant in any of the capacities aforesaid, shall within 20 days after such respective time deliver at the next office of excise, a correct list signed by him or by his known steward or agent, containing the number of such servants, the christian and surname of each servant, and the capacity in which he is employed; and at the same time pay down the duty. 21 *G.* 3. *c.* 31. *s.* 3, 5, 6. List to be entred at the excise office.

And if at any time within 12 months he shall increase the number of servants, he shall within 20 days after such increase deliver a like list of the servants so increased, and pay the duty. *s.* 5.

Where the master has divers places of residence and shall employ servants at each place, or shall employ such servant at any place not being his place of residence; he shall, within one month after delivery of such list and payment of the duty, deliver at the next office of excise for such place, a duplicate of such list signed as aforesaid, and mentioning at the foot thereof where the original list was delivered. *s.* 7.

Penalty of not delivering the liſt.

5. If any perſon ſhall neglect to make out and deliver ſuch liſt or duplicate, or to make ſuch payment, or to renew the ſame yearly; he ſhall forfeit 20 l. And over and above, if he hath omitted to inſert in the liſt any ſervant chargeable, he ſhall forfeit double duty for ſuch *ſervant*. 21 *G.* 3. *c.* 31. *ſ.* 8, 9.

Provided, that if the maſter ſhall have delivered in the liſt, and paid the duty, before any information ſhall be laid for the neglect, he ſhall not be proſecuted, altho' not ſtrictly within the time for thoſe purpoſes limited. *ſ.* 10.

Provided alſo, that executors or adminiſtrators need not to make ſpecial entry, but they may employ the ſervants to the end of the year, as the deceaſed might have done. *ſ.* 11.

Proſecution for offences.

6. The ſaid duties, penalties, and forfeitures, ſhall be recovered before the commiſſioners of exciſe, or commiſſioners of appeals, within the limits of the chief office of exciſe in London; elſewhere, before two juſtices reſiding near, and if (either party, 23 *G.* 3. *c.* 70 *ſ.* 27.) is aggrieved by the determination of the juſtices, he may appeal to the juſtices at the next quarter ſeſſions. Which ſaid commiſſioners and juſtices reſpectively are required, upon complaint or information exhibited on oath, to ſummon the party accuſed, and on his appearance or contempt to examine the matter, and upon proof by confeſſion or oath of one witneſs to give judgment, and iſſue warrants under their hands to levy the forfeitures by diſtreſs and ſale, if the goods are not redeemed in 14 days; and for want of ſufficient diſtreſs, to impriſon the offender for one month, unleſs ſatisfaction ſhall be ſooner made. 21 *G.* 3. *c* 31. *ſ.* 12.

Provided, that the commiſſioners and juſtices, if they ſee cauſe, may mitigate the penalties, the reaſonable coſts and charges of the officers being firſt allowed, and ſo as the mitigation do not reduce the penalty to leſs than a fourth part, over and above the ſaid coſts and charges. *ſ.* 16.

Application of the forfeitures.

7. All the aforeſaid penalties and forfeitures, after deducting neceſſary charges, ſhall be applied half to the uſe of the king, and half to the diſcoverer or informer. 21 *G.* 3. *c.* 31. *ſ.* 17.

Proceedings final.

8. No *certiorari* ſhall be allowed to remove any of the proceedings of the ſaid commiſſioners or juſtices; but their

their determinations ſhall be final to all intents and purpoſes. 21 *G.* 3. *c.* 31. *ſ.* 13. *

XV. Soap.

* By the 17 *G.* 3. *c.* 39. and 19 *G.* 3. *c.* 59. theſe duties were directed to be under the management of the commiſſioners of the duties upon houſes and windows, and ſurveyors were appointed like as of the window duties; and if any perſon was aggrieved by the aſſeſſment or by the ſurveyor's ſurcharge, an appeal laid to the ſaid commiſſioners; and if any perſon was diſſatisfied with their determination, he might require the caſe to be ſtated ſpecially and referred to the opinion of one or more of the judges. During the time that this was in force, ſeveral opinions were obtained under the hands of all or moſt of the judges, which may be in ſome ſort applicable under the preſent mode of levying the duties. As in the following inſtances:

Footman] Major *Powlet* of the 45th regiment, was ſurcharged by the ſurveyor for *Peter Fiſh* as his ſervant in the capacity of a footman. The major appealed, and objected, that the ſaid *Peter Fiſh*, being a ſoldier in the ſaid regiment, attending on him by the permiſſion of the commander of the ſaid regiment, and being liable at all times to be called on in his capacity of a ſoldier, he cannot depend on his ſervice for any fixed time, and therefore he cannot think him a footman within the meaning of the act. But the judges were of opinion, that the major was chargeable for the ſaid ſervant.

Captain *Edwards* of his majeſty's ſhip the *Sandwich*, at *Portſmouth*, had his ſteward on board the ſaid ſhip, who was part of the ſhip's compliment, to wait on him at times as his ſervant, at his lodgings on ſhore; and being aſſeſſed for the ſaid ſervant, appealed to the commiſſioners, who determined that he was not liable; But the judges were of opinion that the determination of the commiſſioners was wrong.

So in the caſe of Mr. *Bogue* at *Titchfield*, who was ſurgeon on board his majeſty's ſhip the *Queen*, it appeared, that he had one male ſervant who belonged to the ſaid ſhip, and was allowed by the government as Mr. *Bogue*'s ſervant; which ſaid ſervant attended Mr. *Bogue* on ſhore at *Titchfield*, and went with him to ſea when the ſhip went to ſea. And Mr. *Bogue*, being aſſeſſed for the ſaid ſervant, appealed to the commiſſioners; who determined that he was not liable to pay the tax for the ſaid ſervant. But the judges were of opinion, that the determination of the commiſſioners was wrong.

Aſſeſſment for a footboy appealed againſt; the appellant alledging that he was only twelve years of age, fatherleſs, and taken out of charity, and employed as an errand boy; that he received no wages, only cloaths and board; that the appellant keeps no horſe; the boy wears no livery; doth not wait at table; only two or three times, when his maſter has been at a public dinner, the boy has then waited upon his maſter; that the boy goes on errands, cleans ſhoes, ſharps knives, ſweeps the

XV. Soap.

Duty on ſoap imported.

1. By the 10. *An.* *c.* 19. There ſhall be paid for all ſoap imported (over and above former duties) 2d a pound;

garden, lights the fire, and doth other occaſional buſineſs in the houſe. And on hearing, the commiſſioners confirmed the ſaid aſſeſſment; they being of opinion that he came under the deſcription of a male ſervant acting in the capacity of a footman. And the judges were of opinion that the determination of the commiſſioners was right.

Coachman.] Appeal againſt an aſſeſſment for a coachman, the appellant inſiſting that he was not taxable, for the following reaſons: That the ſaid coachman, who has lived upwards of eight years with the appellant, was during that time, and now is, retained and employed as a day man, in driving the team at plough, and doing other huſbandry buſineſs; and is paid 6s 6d a week from Michaelmas to Lady day, and 8s a week from Lady day to Michaelmas; but the ſaid coachman ſometimes drives the appellant's coach, and then the appellant gives him his victuals, but at no other time, and therefore muſt be conſidered as a day labourer. And the commiſſioners determined that the appellant was not chargable, and liable to pay for the ſaid coachman. But the judges were of opinion that the determination of the commiſſioners was wrong.

Groom] Appeal againſt an aſſeſſment for a groom, alledging that the ſervant ſo charged is generally employed as a huſbandman, the maſter having in his own hands and occupation land of the value of 40l a year or upwards, and no other ſervant to work or manage the ſame, but admits, that occaſionally he dreſſes his horſe and cleans his ſtirrups. The commiſſioners were of opinion that the ſaid party was not liable, his ſervant being *bona fide* employed in huſbandry, and therefore diſcharged the appellant. And the judges were of opinion that the determination of the commiſſioners was right.

Appeal againſt a ſurcharge for a groom. The appellant was rector of the pariſh, and collected his tithes, and occupied the glebe and other lands. He kept a chaiſe, and a riding horſe, which riding horſe, as well as his chaiſe horſe, he uſed in his team. His ſervant was hired to him as a huſbandman, and worked chiefly in huſbandry, but looked after the chaiſe and riding horſe, together with other horſes. He occaſionally attended his miſtreſs when they rode out. The appellant had no other ſervant charged with the duty on ſervants. The commiſſioners determined that he was not chargeable; but the judges held him liable.

Stable-boy.] Appeal againſt a ſurcharge for a ſtable boy. The appellant kept ſeveral ſervants at weekly wages, who were principally employed in his buſineſs of an ironmonger and ſoap boiler,

a pound; and by the 12 *An. ſt.* 2. *c.* 9. the further ſum of 1 d a pound: Which ſhall be under the management of the commiſſioners of the cuſtoms.

2. And

boiler, amongſt whom was the ſtable boy; who, together with the other buſineſs, took care of and ſaddled his maſter's hackney horſes, and ſometimes cleaned his ſhoes, but did not do any other domeſtic buſineſs. Therefore the commiſſioners, on account of the ſaid ſtable boy receiving weekly wages, and not being a hired ſervant, allowed the appeal; but the judges held him liable.

Gardener, not being a day labourer] Appeal againſt a ſurcharge, upon being charged for a ſervant employed in the capacity of a gardener. And upon hearing, it appeared to the commiſſioners, that the ſaid gardener agreed to keep the appellant's garden in order at a ſtipulated ſum by the year, and that he came to work therein whenever he thought it neceſſary: That he was, beſides, employed by one or more different perſons for the ſame purpoſe; and that he occaſionally worked in gardens at ſeveral other places as a day labourer. Whereupon the commiſſioners, being of opinion that the ſaid appellant was not chargeable with the duty in reſpect of the ſaid gardener, did allow of the appeal againſt the ſaid ſurcharge. But the judges, on the matter being referred to them, held him chargeable.

There was another appeal againſt a ſurcharge for a gardener, alledging, that he was not a gardener, but only a day labourer, and did ſundry other ſorts of work for the appellant in the huſbandry way, beſides working in his garden; that the appellant's coachman pruned his trees, and did all the capital work in the garden, for which he gave him a guinea a year over and above his wages as coachman; and that the ſaid gardener was only a labourer and paid by the week. The commiſſioners held, that the appellant ought not to be charged. And of that opinion were the judges.

Gamekeeper] Several lords of manors granted deputations to divers gentlemen to be gamekeepers within their reſpective manors. And being ſurcharged for the ſaid gentlemen gamekeepers, they appealed againſt the ſurcharge. The ſurveyor urged, that in the terms of the act all gamekeepers are rateable without diſtinction or exception; and that they therefore, in their preſent capacity as gamekeepers, could have no pretence to any exemption. But the commiſſioners were of opinion, that the ſaid gentlemen, conſidered as game keepers, did not come within the meaning of the act as ſervants, and therefore not rateable. And with that opinion the judges concurred.

Appeal from a ſurcharge for a gamekeeper, alledging, that he was hired only by the day during the ſporting ſeaſon, as an aſſiſtant to the gamekeeper, who was returned and rated, and

Duty on ſoap made in the kingdom.

2. And by the ſaid act of 10 *An.* c. 19. there ſhall be paid for all ſoap made in this kingdom 1 d a pound; and by

that there could not be more than one gamekeeper appointed for one manor. With which appeal the commiſſioners and alſo the judges concurred.

Huntſman] Aſſeſſment by way of ſurcharge, wherein one of the members of a ſubſcription hunt was charged for a huntſman employed by him and others concerned in the ſaid hunt: He appealed againſt the ſurcharge, alledging, that this is a caſe not provided for in the act; that no one is bound to return this man, nor can return him as his ſervant; all return him jointly as ſervant of all. And on hearing the appeal, the commiſſioners were of the ſame opinion with the appellant, and quaſhed the ſurcharge. But the judges held that their determination was wrong.

Not to extend to any trade or calling by which a man earns a livelihood or profit] The appellant was by trade a grocer, and had a ſervant man, whom he hired and payed by the day, and a ſervant boy whom he hired and paid by the week, neither of whom boarded or lodged in his houſe. They were principally employed in carrying out goods with horſes; which horſes were kept principally for the uſe of the buſineſs in carrying out goods as aforeſaid, but were occaſionally uſed for other purpoſes. Both theſe ſervants looked after the horſes; and beſides the employment in carrying out goods, were occaſionally employed in ſerving cuſtomers in the ſhop, and going on errands, as well concerning the buſineſs of a grocer, as other little matters for the uſe of their maſter's family, ſuch as cleaning ſhoes and knives. Againſt the ſurveyor's ſurcharge the maſter appealed to the commiſſioners, ſuggeſting that he ought not to be charged for either of theſe ſervants. And the commiſſioners determined that he was not liable. And of that opinion were the judges.

Appeal againſt a ſurcharge by a draper, who kept a ſervant boy, about the age of 14 years, that boarded and lodged in his maſter's houſe, and was chiefly employed to ſerve in his ſhop, carry out parcels, and go on errands, and occaſionally to clean knives and ſhoes, but never waited at table, nor wore a livery. The commiſſioners determined that he was not liable to be charged. And of that opinion were the judges.

A ſchoolmaſter, who took boys into his houſe to board and educate, in order thereby to earn a livelihood and profit to himſelf, was ſurcharged for his ſervant by the ſurveyor, who alledged, that he had ſeen the ſaid ſervant ſerve his ſaid maſter in the capacity of groom or ſtable boy, by leading his horſe out of his ſaid maſter's ſtable, and waiting until he mounted him. But it appearing that the ſaid ſervant was retained or employed by his maſter *bona fide* for the purpoſe of his calling as a ſchoolmaſter, to clean the ſchool, the boys ſhoes, heat the oven, brew liquor,

by the 12 *An. ſt.* 2. *c.* 9. the further ſum of one half penny a pound. And by the 22 *G.* 3. *c.* 68. for all hard cake ſoap the further ſum of three farthings a pound, and for all ſoft ſoap one farthing a pound: which additional duties ſhall be repaid for all ſuch ſoap uſed in the making any cloths, ſerges, kerries, bays, ſtockings, or other manufacture of ſheep's wool, or in whitening new linen in the piece in order for ſale.

Officers for the duties on ſoap.

3. And the commiſſioners of the treaſury ſhall appoint commiſſioners for the duty on ſoap made in the kingdom; who ſhall ſubſtitute inferior officers. 10 *An. c.* 19. *ſ.* 5.

Who ſhall be permitted to make ſoap.

4. No perſon, within the limits of the head office of exciſe in *London*, ſhall be permitted to make any ſoap, unleſs he occupy a tenement of 10 l a year, and be aſſeſſed to and pay the pariſh rates; and elſewhere, unleſs he be aſſeſſed to and pay to church and poor. 17 *G.* 3. *c.* 52. *ſ* 1.

Place of making to be entred.

5. And no maker of ſoap ſhall ſet up, alter, or uſe any boiling houſe, workhouſe, warehouſe, ſtorehouſe, ſhop, room, or other place for the making or keeping of ſoap, or for the boiling or keeping any oil, tallow, pot-aſh, lime, or other materials proper to be made into ſoap; or uſe any copper, kettle, furnace, fat, ciſtern, trough, or other veſſel for the boiling or making of ſoap, without firſt giving notice thereof in writing, at the next office for the ſaid duties; on pain of 50 l. 10 *An. c.* 19. *ſ.* 6.

And all ſoap, oil, tallow, and other materials, which ſhall be found in any private boiling houſe, workhouſe, warehouſe, or other place, and all private coppers, kettles, furnaces, troughs, and other veſſels, for which no entry ſhall be made, or notice given, ſhall be forfeited, and the value thereof. 10 *An. c.* 19. *ſ.* 19.

And by the 5 *G.* 3. *c.* 43. Whereas offenders frequently withdraw themſelves to avoid the aforeſaid penalty of clandeſtine making of ſoap, it is enacted, that a ſummons left at the place where diſcovery ſhall be made of ſuch offence, directed to the perſon proſecuted by his right or aſſumed name, ſhall be as effectual as if delivered perſonally, and directed to him by his proper name. *ſ.* 19.

Covers and locks to be provided.

6. And every perſon who ſhall make any *hard* ſoap, ſhall at his own expence provide ſufficient wooden covers (to be approved of in writing by the ſurveyor or ſupervitor) to every copper, pan, or other utenſil, wherein he ſhall boil or make any hard ſoap; which veſſels, with

liquor, to work in huſbandy, and for no other purpoſe, the commiſſioners determined the appellant over-rated by the ſaid ſurcharge. And with that determination the judges concurred.

the covers thereto affixed, and alſo the pipes that convey the waſte or ſalt lees from the ſaid coppers, pans, or other utenſils, ſhall be locked and ſealed down by the officer, as ſoon as the fire is damped or withdrawn, whenever any ſoap or any thing of a ſoapy quality ſhall be left therein. Which ſaid locks, and keys to the ſame, and all other neceſſary faſtenings for ſecuring the ſaid veſſels and pipes, ſhall be provided by the ſurveyor or ſupervifor, at the expence of the maker. And if any perſon ſhall make any hard ſoap before he ſhall have affixed ſuch covers, or ſhall refuſe to pay for the locks and keys and other faſtenings as aforeſaid, or ſhall wilfully break or damage any ſuch lock, or ſeal, or other faſtening; he ſhall forfeit 100l. 5 *G.* 3. *c.* 43. *ſ.* 15. 12 *G.* 3. *c.* 46. *ſ.* 7.

And by 17 *G.* 3. *c.* 52. The furnace door of every copper, pan, or utenſil, uſed by the maker for the boiling or making of ſoap, ſhall be locked by the exciſe officer, as ſoon as the fire is damped or drawn out; and locks and keys, and all other neceſſary faſtenings, ſhall be provided by the ſurveyor and ſupervifor, at the expence of the maker: And if the maker ſhall refuſe to pay for ſuch locks, keys, and other faſtenings, or hinder the officer in fixing the ſame; he ſhall forfeit 50 l. And if by any device any perſon ſhall open ſuch furnace door, after it hath been locked by the officer; or ſhall damage any ſuch lock or other faſtening; he ſhall forfeit 100 l. *ſ.* 6, 7, 8.

Officer to enter and ſurvey.

7. By the 10 *An.* *c.* 19. The officer ſhall at all times, by day or night, and if in the night then in the preſence of a conſtable, be permitted on requeſt to enter the houſe, boiling houſe, warehouſe, or other place, uſed by any maker of ſoap; and by gaging, weighing or otherwiſe, take an account of the quantity, and thereof make return in writing to the commiſſioners or whom they ſhall appoint, leaving a true copy, if demanded, under his hand with the maker; and if he ſhall refuſe or neglect to leave ſuch copy (after demand in writing, 12 *G.* *c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. And if any maker ſhall obſtruct the officer, he ſhall forfeit 20 l. *ſ.* 12, 15.

If in the night, then in preſence of a conſtable] *E.* 17 *G.* 3. *Hill* and *Barnes*. In treſpaſs for breaking into the plaintiff's houſe, and entring and ſearching the ſame in the pariſh of *Chriſtchurch Middleſex*. On not guilty, a verdict was given for the plaintiff, with 30 l damages, ſubject to the following caſe. The plaintiff was a tallow chandler and maker of ſoap. The defendants were exciſe officers, and in the night time entred and ſearched the houſe and workſhop of the plaintiff, and ſtayed there half

half an hour. They had with them one *John Farrel*, who about two years before had been headborough of *St. Paul's Shadwell*, when a board was fixed over his door with his name, and the word headborough upon it, which ſtill continued, though he was no longer headborough, but he ſtill attended the rotation office of juſtices, as an apprehender of felons. The defendants applied to him at his own houſe, to attend them in making the ſearch; which he accordingly did.—For the plaintiff were ſtated the ſtatutes which require the preſence of a *conſtable or other lawful officer of the peace*, when exciſe officers attempt to make a ſearch in the night: That *Farrel* was no peace officer, having no department or known denomination as ſuch, and that an officer by reputation is not ſufficient.—For the defendants, it was inſiſted, that an officer by reputation is well enough to excuſe the defendants, who could not examine into the form of his appointment; and obſerved, that by the caſe no treſpaſs is ſtated, no breaking and entring, no force, nor is it ſaid that the ſearch was againſt the will of the plaintiff.—By *De Grey* chief juſtice: The treſpaſs is clearly enough ſtated, unleſs the court will wilfully miſunderſtand it. The action is hard; but the queſtion is now a dry point of law. To be ſure one who illegally aſſumes the name of an officer is not a legal officer. *Gould* juſtice: It is of great conſequence to the public for the court to ſee theſe powers, lodged in the officers of the revenue, ſtrictly purſued. I had a harder caſe once before me at *Pool:* A cuſtom houſe officer, who had ſeized ſome ſmuggled cambrick, had a verdict againſt him with very large damages, becauſe he was attended by a conſtable, not of the town of *Pool*, but of the county of *Dorſet*. *Blackſtone* juſtice: It was incumbent on the defendants, to be ſure that they had a regular peace officer. *Farrel* was certainly not ſo at the time of the ſearch; and I incline to think he never was properly qualified for this ſearch, being formerly an officer of *Deptford*, and not of *Chriſtchurch*. The ſpirit of all the revenue laws is, that the accompanying officer muſt be an officer of the place; that the ſubject may not be unreaſonably terrified, at his houſe being entred in the night by mere ſtrangers. *Nares* juſtice was of the ſame opinion that the ſearch was illegal.—And judgment was given for the plaintiff. *Black. Rep.* 1135.

And by the 17 *G.* 3. *c.* 52. When any copper, pan, or other utenſil, or the furnace doors thereof, ſhall be ſecured as aforeſaid, the ſurveyor, ſupervisor, or other officer, ſhall between the hours of five in the morning and eleven in the evening be permitted on demand to enter every workhouſe of ſuch maker, and may unlock

and examine every ſuch copper, pan, or utenſil, and the doors thereof, and after ſuch examination ſhall again lock and ſecure the ſame: And if any perſon ſhall obſtruct the officer herein, he ſhall forfeit 100 l. *ſ.* 9.

Private pipe or conveyance.

8. No maker ſhall have any private pipe or conveyance, on pain of 200 l. And the officer, in the day time, and in preſence of a conſtable, on requeſt made and cauſe declared, may break up the ground in any ſoap houſe, or the ground near adjoining, or any wall, partition, or other place, to ſearch; and if he finds any ſuch private pipe or other conveyance, he may break up or cut the ſame: And if any perſon ſhall obſtruct the officer in ſuch ſearch, he ſhall forfeit 100 l. 17 *G.* 3. *c.* 52. *ſ.* 10, 11, 12.

Provided, that if upon ſearch no ſuch pipe ſhall be found, the officer ſhall make good the ground, wall, or other place, or make ſatisfaction to the owner, to be adjudged by the two next juſtices: or he may bring his action for the damages. *ſ.* 12.

And the maker ſhall once in every lunar month perfectly cleanſe every copper, pan, and other utenſil, and ſhall give three days notice thereof to the officer: And when cleanſed, the officer may make ſearch; and if he finds any hole not before known, the owner ſhall be liable to the penalties for concealing ſoap (that is, he ſhall forfeit 500 l. 1 *G. ſt.* 2. *c.* 36. *ſ.* 14, 15.), unleſs he ſhall prove that it was made by burſting or other accident ſince the laſt ſurvey, and that he had given notice thereof to the officer who firſt came to ſurvey after ſuch accident happened. And if ſuch maker ſhall neglect to cleanſe his copper, pan, or other utenſil, or to give ſuch notice as aforeſaid, or ſhall obſtruct the officer in ſearching and examining, he ſhall forfeit 50 l. *ſ.* 14.

Notice of the time of working.

9. Every maker of ſoap, before he begin any making, if within the bills of mortality, ſhall give 12 hours, if elſewhere, 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of 50 l. And the officer ſhall attend accordingly, and unlock the furnace doors. 11 *G. c.* 30. *ſ.* 33. 17 *G.* 3. *c.* 52. *ſ.* 8.

And putting lees or lye into the copper or other utenſil, ſhall be deemed a beginning ſuch making, ſo as to ſubject him to the forfeiture. 11 *G. c.* 30. *ſ.* 34.

And if the maker ſhall not begin in ſix hours after the time mentioned in the notice within the bills, and in 12 hours elſewhere; the notice ſhall be void. *ſ.* 35.

And if the copper or other utenſil be locked or ſealed down, the officer ſhall attend to unlock and open the

ſame, after the maker hath given to him 12 hours notice if within the limits of the head office in *London*, and elſewhere 24 hours notice, of ſuch his intention. And if by any contrivance ſuch maker ſhall open any copper, pan, utenſil, or pipe, before the ſame ſhall have been opened by the officer; he ſhall forfeit 20 l. 5 *G.* 3. *c.* 43. *ſ.* 15.

And no maker of hard ſoap ſhall, upon any pretence of cleaning or waſhing any copper, pan, or other utenſil, uſed in boiling of ſoap, or on any other pretence, preſume to light any fire under the ſame, without firſt giving ſuch notice; on pain of 20 l. *ſ.* 16.

Frames to be made uſe of in working.

10. Every maker of hard ſoap ſhall make uſe of regular ſquare or oblong frames only, for the cleanſing or putting his ſoap (whether perfect or not perfect) into, when taken out of the veſſel where it was boiled or prepared; and the bottom, ſides, and ends of every ſuch frame ſhall be 2 inches thick at the leaſt; and ſuch frame ſhall not exceed 45 inches in length, nor 15 inches in breadth; of which frames he ſhall give notice in writing at the next office, before he ſhall uſe the ſame; all which ſaid frames ſhall be marked and numbered by the ſurveyor or ſupervifor, at the expence of ſuch maker: on pain of forfeiting, for every ſuch offence reſpectively, the ſum of 20 l. 5 *G.* 3. *c.* 43. *ſ.* 17.

Reworking ſtale ſoap.

11. If any ſtale or rotten ſoap, or cuttings, be put into the copper or pan, in preſence of an officer, to be refreſhed or new made; the officer ſhall make allowance of the duty, and certify the ſame upon his report. 10 *An. c.* 19. *ſ.* 28.

But if it ſhall be put into any making of ſoap, without giving to the officer 12 hours notice in writing within the bills, and 25 hours elſewhere; there ſhall be no allowance made for it. 11 *G. c.* 30. *ſ.* 37.

And if any officer ſhall falſely pretend that he had ſuch notice when he had not, and make and certify ſuch allowance; he, and alſo the maker, ſhall forfeit 10 s for every pound ſo certified. *ſ.* 38.

But no *hard* ſoap (whether perfectly made or not), after the ſame ſhall have been cleanſed or put into the frame, ſhall on any pretence be returned or put again into the copper or other utenſil, for boiling or reworking; and if it ſhall be ſo returned, it ſhall be charged again with the duties. 5 *G.* 3. *c.* 43. *ſ.* 18.

And the officer ſhall allow to the maker in his charge, one pound in every ten of ſuch hard ſoap; which ſhall be a full compenſation for all waſte, loſſes or damages. *ſ.* 14.

Scales and weights.

12. And the maker ſhall keep juſt ſcales and weights where he makes his ſoap, and permit and aſſiſt the officer to uſe them; on pain of 10 l. 10 *An. c.* 19. *ſ.* 13.

And

And by the 10 *G.* 3. *c.* 44. if he ſhall uſe inſufficient ſcales or weights, he ſhall forfeit 100 *l*: but not to be proſecuted both on this and the former act.

Officer to charge for materials miſſing.

13. And the officer ſhall be permitted to take an account of the quantities of oil, tallow, pot-aſhes, lime, and other materials proper to be made into ſoap, that ſhall be in the maker's poſſeſſion; and if the officer ſhall miſs any quantity of them, which he had taken account of the laſt time he was there, and ſhall not on reaſonable demand receive ſatisfaction what is become of them, the officer may charge him with ſuch quantity of ſoap, as ſuch materials in his judgment would have made, not exceeding 14 gallons of ſuch ingredients (beſides the lees) for every barrel. 10 *An.* *c.* 19. *ſ.* 14.

Removing ſoap unſurveyed.

14. And no maker ſhall (on pain of 20 *l*) remove any ſoap of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the ſame. 10 *An.* *c.* 19. *ſ.* 16.

Unſurveyed to be kept ſeparate.

15. And the makers ſhall keep all the ſoap by them made, and not ſurveyed, ſeparate from that which hath been ſurveyed, for 24 hours after making, within the bills, or two days in any other place; unleſs it ſhall have been ſooner ſurveyed; on pain of 5 *l*. 10 *An.* *c.* 19. *ſ.* 17.

Concealing.

16. And if any maker ſhall conceal any ſoap or materials; he ſhall forfeit the ſame, and alſo 500 *l*. 1 *G.* *ſt.* 2. *c.* 36. *ſ.* 14, 15.

And by the 5 *G.* 3. *c.* 43. If the officer ſhall have cauſe to ſuſpect, that ſoap is privately making in any place; or that any ſoap is concealed with intent to avoid the duty; in ſuch caſe, on oath made by ſuch officer before a commiſſioner or one juſtice reſiding near to the place, ſetting forth the ground of his ſuſpicion, ſuch commiſſioner or juſtice may, if he ſhall judge it reaſonable, by ſpecial warrant authorize ſuch officer, by day or night (but if in the night, in preſence of a conſtable) to enter into every ſuch place ſuſpected, and to ſeize and carry away as forfeited all ſuch ſoap as he ſhall there find ſo privately making, together with all materials then ready or preparing for making of ſoap, and likewiſe all ſuch ſoap as they ſhall find ſo concealed, together with the boxes or other package: And the perſon that ſhall be found privately making ſoap, or in whoſe poſſeſſion ſuch ſoap ſhall be found, ſhall forfeit 100 *l*. *ſ.* 20.

Meaſure of ſoap.

17. Every barrel of ſoap ſhall contain 256 pounds averdupois; half barrel 128; firkin 64; half firkin 32; beſides

beſides the weight or tare of the caſk. And all ſoap; (except hard cake ſoap, and ball ſoap, 10 *An.* *c.* 26. *ſ.* 111.) ſhall upon making thereof be put by the maker into ſuch caſk, and none other. 10 *An.* *c.* 19. *ſ.* 8.

And all ſoft ſoap that ſhall be filled in any other caſk leſs than barrels, half barrels, firkins, and half firkins, ſhall be forfeited, and alſo 5 l. 12 *An.* *ſt.* 2. *c.* 9. *ſ.* 19.

Entry and payment of the duties.

18. The maker ſhall weekly make entry in writing at the next office of all the ſoap by him made within each week, ſetting forth the weight, and what quantity was made at each boiling in that week; on pain of 50 l. Which entries ſhall be on the oath of the maker, or chief workman, according to the beſt of his knowledge and belief. The ſaid entry and oath within the bills, to be at the chief office of exciſe; and elſewhere, with the collector and ſupervisor. 17 *G.* 3. *c.* 52. *ſ.* 3.

And within one week after entry, the maker ſhall pay and clear off the duties, on pain of double duty; and after ſuch default in payment, he ſhall not ſell or deliver out any ſoap, until he hath paid off his duty, on pain of double value. *ſ.* 4.

Provided, that no maker ſhall be obliged to go or ſend further than the market town where the ſoap is made, or the next market town, to make ſuch entry or payment. *ſ.* 5.

Drawback for ſoap uſed in the woollen manufacture.

19. By the 10 *An.* *c.* 19. Any perſon who ſhall uſe ſoap in making of cloths, or other manufactures of ſheeps or lambs wool only, or manufactures whereof the greateſt part of the value of the materials ſhall be wool; or in finiſhing the ſaid manufactures; or preparing the wool for the ſame; or in whitening new linen in the piece, (or his chief workman)——may make proof in writing by affidavit, before the collector or ſupervisor, ſpecifying the kinds and quantity of the manufactures, and the days between which, and the places where the ſame were made, prepared, or whitened, and the quantity and kind of ſoap conſumed therein, and that no allowance for the duty on ſuch ſoap hath been made: whereupon the collector ſhall repay one third of the duty on ſuch ſoap. *ſ.* 29.

And the ſaid affidavit need not be ſtamped; and no fee ſhall be taken, except 4 d for writing the affidavit, on pain of treble damages to the party grieved, with full coſts; to be recovered as the other penalties. *ſ.* 30.

And any perſon making falſe affidavit, ſhall forfeit treble value of the allowance; and for the ſecond offence (on conviction in the courts at *Weſtminſter*) ſhall ſuffer as for wilful perjury. *ſ.* 31. And by the 12 *An.* *ſt.* 2. *c.* 9. the whole duty on that act ſhall be repaid.

But

But this shall not extend to allow any greater drawback for soap imported, than for soap made in this kingdom; but only so much shall be repaid as the drawback of the duties on soap made in this kingdom shall amount unto. 14 *G.* 3. *c.* 73. *s.* 15.

Soap carried coastwise.

20. Cocquets granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, the same shall be forfeited, and seized, together with the package. 23 *G.* 2. *c.* 21. *s.* 29.

Importation and exportation.

21. No soap shall be imported, otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50 l. 23 *G.* 2. *c.* 21. *s.* 27.

But on information brought against any such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner, in payment of the forfeiture. 26 *G.* 2. *c.* 32. *s.* 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 *G.* 2. *c.* 21. *s.* 28.

Soap that hath paid the duty may be exported; and the duties shall be drawn back. 10 *An.* *c.* 19. *s.* 22, 23, 24. But no drawback shall be allowed on the exportation of any foreign soap imported. 23 *G.* 2. *c.* 21. *s.* 36.

The officers of excise or customs may seize any soap with the package, that shall be found in any vessel, cart, or other carriage; where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported without payment of duty, or that the same has been exported and relanded after repayment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5 l for every 100 pounds weight; and also the goods and package shall be forfeited. 23 *G.* 2. *c.* 21. *s.* 31.

And if any person shall knowingly harbour or conceal any soap unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims

claims any property therein or not, forfeit 50 l for every hundred weight, together with the goods and package. 23 *G.* 2. *c.* 21. *ſ.* 32.

And where any ſuch ſoap ſhall be ſeized as forfeited, and no perſon ſhall claim the ſame in 20 days, if it is within the limits of the chief office of exciſe in *London*, the officer who made the ſeizure may cauſe notice ſigned by the ſolicitor of exciſe, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the ſame by the commiſſioners of exciſe; and if it is out of the ſaid limits, then publick notice ſhall be given by proclamation at the next market town, on the market day next after the ſaid 20 days, of the day and place where the juſtices will proceed to trial and condemnation thereof. And the judgment thereon ſhall not be liable to any appeal, or be removed by certiorari. 23 *G.* 2. *c.* 21. *ſ.* 33.

Power of the juſtices.

22. The exciſe laws ſhall be in force for managing theſe duties; and the penalties (except where it is otherwiſe herein directed) ſhall be recovered and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and diſtributed, half to the king, and half to him that ſhall ſue. 10 *An.* *c.* 19. *ſ.* 26. 11 *G.* *c.* 30. *ſ.* 39. 24 *G.* 2. *c.* 40. *ſ.* 33.

Proof to lie on the claimer.

23. And where any ſoap ſhall be ſeized for non-payment of duties, or non-entry, and it ſhall be diſputed whether ſuch payment or entry were made or not, the proof ſhall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *ſ.* 35.

Appeal.

24. And if the party is not ſatisfied with any judgment of the juſtices on the act of 23 *G.* 2. *c.* 21. abovementioned, he may appeal to the next quarter ſeſſions (except in the caſe before mentioned, where no perſon ſhall claim the goods ſeized.) *ſ.* 37.

Mitigation.

25. And on information on the ſaid act of the 23 *G.* 2. the mitigation ſhall not reduce the penalty to leſs than a fourth part, over and above the coſts to be allowed. *ſ.* 38.

Utenſils liable.

26. And all ſoap, materials, and utenſils in the cuſtody of the maker, or of any in truſt for him, ſhall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 *An.* *c.* 19. *ſ.* 20.

XVI. Spirituous liquors.

So far as running of brandy and other ſpirituous liquors falleth in with the running of other uncuſtomed goods; ſee the firſt part of this title concerning the Cuſtoms in general.

1. By

Duty on importation.

1. By the ſeveral acts a general duty of exciſe is laid on every gallon of ſpirituous liquors imported (over and above the cuſtoms) as follows; *viz.*

Single brandy, ſpirits, aqua vitæ, or ſtrong waters of any kind, of the produce and manufacture of the Britiſh plantations, 4s 8d. Double, 8s 8d. — Not being of the Britiſh plantations; Single 6s 8d. Double, 12s 8d.

Which ſhall be raiſed as the duties on other exciſeable liquors. 12 *C.* 2. *c.* 23. 12 *C.* 2. *c.* 24. 4 & 5 *W.* *c.* 3. 4 *Ann.* *c.* 6. 6 *G.* 2. *c.* 17.

Arrack from the *Britiſh* colonies in the *Eaſt Indies*, the ſame as for brandy and foreign ſpirits imported.

And by the 20 *G.* 3. *c.* 35. for every gallon of ſingle brandy ſpirits, or aqua vitæ imported, a further duty of 1s; above proof, 2s.

Officers may take ſamples on ſhipboard.

2. To enable the gagers the better to aſcertain the proof of all foreign imported liquors liable to the duties of exciſe; it ſhall be lawful for the gagers or other officers of exciſe, at any time before the gaging, to take a ſample not exceeding half a pint, out of each caſk or other package containing foreign ſpirituous liquors imported, without paying any thing for the ſame. 32 *G.* 2. *c.* 29.

Landing without duty paid.

3. And if any perſon ſhall land any *French* brandy, before the duty be paid or ſecured, or without licence from the proper officer ſo to do; he, and every perſon aiding therein, or concealing the ſame when landed, ſhall not only forfeit the ſame, but alſo double value: And if any officer of the cuſtoms or exciſe ſhall connive thereat; he ſhall be incapable to hold any office in the revenue, and forfeit 500l. 1 *An.* *ſt.* 2. *c.* 14.

Provided that, in order to have an opportunity to ſell the ſame on ſhipboard, it ſhall be lawful for the importer or proprietor of any foreign ſpirituous liquors, to take, in the preſence of a gager or other exciſe officer, a ſample, not exceeding half a pint, out of every caſk or other package, whilſt the ſame ſhall be on ſhip board, and before landing, without paying any duty for the ſame. 32 *G.* 2. *c.* 29.

Exciſe officers may go on board.

4. And the officers of exciſe may go on board any ſhip or veſſel, and ſearch in like manner as the officers of the cuſtoms may do, for any exciſeable liquors, and ſeize all ſuch as ſhall be forfeited, and ſuch as ſhall be unſhipped before entry and payment of the duties, together with the caſks and other package. 11 *G.* *c.* 30. *ſ.* 1.

Warrant to ſearch.

5. And if any officer of the exciſe have cauſe to ſuſpect, that any foreign ſpirits ſhall be fraudulently concealed in any place, entred or not entred, if it is within the bills of mortality,

mortality, then on oath made before two commiſſioners, if elſewhere, before one juſtice, where he ſuſpects them to be concealed, ſetting forth the ground of his ſuſpicion; he or they may by ſpecial warrant authorize ſuch officer by day or night, but if in the night in preſence of a conſtable, to enter, ſeize, and carry away the ſame as forfeited, together with the caſks or veſſels: and if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 100*l.* 11 *G. c.* 30. *ſ.* 2.

Who only may ſeize.

6. And by a general clauſe in the 8 *G. c.* 18. All brandy, arrack, rum, ſpirits, and ſtrong waters, *Britiſh* or foreign, and all foreign exciſeable liquors forfeited, together with the caſks or other package, may be ſeized by any officer of the cuſtoms or exciſe, or perſons deputed by warrant from the lord treaſurer, or under treaſurer, or by ſpecial commiſſion under the great or privy ſeal, and no other perſon. *ſ.* 24.

Obſtructing the officer.

7. And if any perſon ſhall obſtruct any officer of the cuſtoms or exciſe, in ſeizing or ſecuring any of the ſaid liquors, or endeavouring to reſcue them after ſeizure, or ſhall after ſeizure ſtave, or otherwiſe damage any caſk, or veſſel; he ſhall forfeit 40*l.* 8 *G. c.* 18. *ſ.* 25.

Notice to be given of ſeizure.

8. But no perſon ſhall be intitled to any reward given on ſuch ſeizure, unleſs he give notice to the next officer of exciſe, or to the ſupervifor, in 48 hours; who ſhall, on ſuch notice, take an account of the ſpecies and quantity; nor ſhall ſuch goods be afterwards removed without a permit from ſuch officer of exciſe, on pain of being re-ſeized. 12 *G. c.* 28. *ſ.* 6.

In what ſhips to be imported.

9. If any foreign brandy, arrack, rum, ſtrong waters, or ſpirits of any kind ſhall be imported, in any ſhip or veſſel of 100 tons burden or under (except only for the uſe of the ſeamen, not exceeding two gallons each); ſuch veſſel with her tackle, and alſo the ſpirits, ſhall be forfeited. 5 *G.* 3. *c.* 43. *ſ.* 27. ——— Except rum, or other ſpirits of the growth and manufacture of the *Britiſh* ſugar plantations; which may be imported in any veſſel of not leſs burden than 70 tons. 6 *G.* 3. *c.* 46. *ſ.* 9.

And to prevent clandeſtine landing of ſpirits from *Ireland*; if any brandy, rum, ſtrong waters or other ſpirits ſhall be entred or ſhipped for exportation from *Ireland*, to any place not within the ſame kingdom, in any veſſel under the burden of 100 tons (except only for the uſe of the ſeamen, not exceeding two gallons each); the ſaid veſſel with the tackle and furniture, and alſo all ſuch ſpirits, ſhall be forfeited. 5 *G.* 3. *c.* 43. *ſ.* 30.

Ships hovering near the coaſt.

10. And where any veſſel of 50 tons or under, being in part or fully laden with brandy, ſhall be at anchor,

or within two leagues from the ſhore, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed ſloop appointed for the guard of the coaſt, or the commander of any ſloop or veſſel in the ſervice of the cuſtoms, may compel the maſter to come into port; and the ſame ſhall be liable in all caſes as ſhips hovering within the limits of any port. 6 *G. c.* 21. *ſ.* 31.

And if the maſter, purſer, or other perſon having charge of the veſſel, ſhall ſuffer any brandy (or other uncuſtomed goods) to be put out of the ſhip into any hoy, lighter, boat, or bottom, to be laid on land; he ſhall, beſides the other penalties, ſuffer ſix months impriſonment. 6 *G. c.* 21. *ſ.* 32.

And by the 9 *G.* 2. *c.* 35. Where *any* veſſel coming from foreign parts, and having on board any foreign brandy or ſpirits, in caſks under ſix gallons (except only for the uſe of the ſeamen, not exceeding two gallons each) ſhall be found at anchor, or hovering within two leagues of the ſhore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all ſuch ſpirits, with the caſks and other package, or the value thereof, ſhall be forfeited (whether bulk ſhall have been broken or not); and the ſame may be ſeized, or the value thereof ſued for by the officers. *ſ.* 22. And if ſuch veſſel do not exceed the burden of 50 tons, the ſaid veſſel alſo, together with her tackle and furniture, ſhall be forfeited. 3 *G.* 3. *c.* 22. *ſ.* 5.

In what caſks to be imported.

11. No brandy ſhall be imported in any veſſel not containing 60 gallons at leaſt; on pain of forfeiting the ſame, or the value. 4 *W. c.* 5. *ſ.* 8.

And no *geneva*, or *rum*, ſhall be imported in any veſſel or caſk, not containing 60 gallons at the leaſt (except only for the uſe of the ſeamen, not exceeding two gallons each); on pain of forfeiture. 5 *G.* 3. *c.* 43. *ſ.* 28.

Provided, that if it ſhall be made appear to the ſatisfaction of the commiſſioners of the cuſtoms, that any rum, being the produce of any of his majeſty's dominions in *America*, ſhall be imported from thence in ſmall caſks, without fraud or concealment, either for the uſe of the maſter in the voyage, or for the private uſe of merchants or traders importing the ſame, or deſigned as preſents, and not by way of merchandize; they may, if they think proper, admit ſuch rum to an entry, and cauſe the duties to be accepted inſtead of the forfeiture. *ſ.* 29.

Places of keeping to be entred.

12. Whereas the illegal importation of foreign ſpirits is greatly promoted by fictitious entries of ſtorehouſes and other

other places for keeping such liquors, by evil minded and indigent persons; it is therefore enacted, that no seller of or dealer in foreign spirituous liquors, residing within the limits of the head office of excise in London (not being a retailer thereof duly licensed) shall be permitted to make entry of any warehouse, storehouse, room, shop, cellar, vault, or other place for keeping any foreign spirituous liquors; unless he shall inhabit in a tenement of 12 l a year or upwards, and for which he is assessed in his own name, and also pay to the parish rates; and in no other part of the kingdom, unless he be assessed and pay to church and poor: otherwise he shall be liable to forfeit as dealing therein without entry. 23 *G.* 3. *c.* 70. *s.* 1.

And where any entry shall be made, no other seller or dealer (not being a joint trader or partner with such seller or dealer) however qualified, shall make entry of the same, or of any other warehouse, room, or place, within the same house; on pain of being subject to the like penalties. *s.* 2.

13. All rum or spirits of the growth or manufacture of the *British* sugar colonies (imported directly from thence) on entry made (within 30 days after report made by the master or purser of the contents and loading of the ship, 31 *G.* 2. *c.* 36. *s.* 5, 6.) and before payment of the duty, may be landed and put into warehouses, provided at the charge of the proprietor or importer, and approved of by the commissioners; the proprietor or importer first giving bond for payment of the duty, if it be sold (within 12 calendar months; and if it be not sold in that time, then to pay the duty at the end of 12 calendar months, 6 *G.* 3. *c.* 47. *s.* 4.) according to the gage taken at the time of landing and lodging in the warehouse. 15 *G.* 2. *c.* 25. *s.* 1. Rum may be warehoused before duty paid.

And if any rum or spirits be landed, before entry at the custom house and with the collector of excise, and the duties secured, or without warrant for landing, or without the presence of an excise officer; the same shall be forfeited, or the value thereof. *s.* 3.

And before it be landed and lodged in the warehouse, a mark shall be set upon every cask, mentioning the quantity, and the proprietor or importer; and the warehouse keeper and excise officer shall each keep a book, and enter the particulars carried in or out, and when, and for whose use delivered; and every six months, or oftner if required, transmit an account thereof in writing, and on oath, to the commissioners of excise, who shall in one month examine the same: and if any rum or spirits shall

be delivered contrary to this act, the warehouse keeper or officer offending shall be disabled from holding any publick employment, and forfeit 100 l. *s.* 4.

And the rum or spirits may be delivered out of the warehouse, on payment of the excise, and on producing to the warehouse keeper, and the excise officer attending the warehouse, a certificate of such payment; and the warehouse keeper shall give a permit therewith, signed by the excise officer, to prevent the seizing thereof. *s.* 5.

But no proprietor, importer, or buyer, shall receive out of the warehouse less than one vessel of 20 gallons, unless for the use of seamen in a voyage. *s.* 6.

And the proprietor or importer may fix a lock on the warehouse and keep the key; and the excise officer may put on another, and keep the key; and the proprietor or importer may in presence of the warehouse keeper or excise officer, at all reasonable times, view, and take out as aforesaid. *s.* 7.

But if such proprietor or importer shall by any device or contrivance open the warehouse, except in the presence of the warehouse keeper or excise officer, he shall forfeit 500 l. 17 *G.* 3. *c.* 52. *s.* 15.

And if any rum or spirits remain in the warehouse above 12 calendar months, (6 *G.* 3. *c.* 47. *s.* 4.) without paying the duty, the commissioners of excise may sell them by auction, and pay themselves the duty and charges, rendring the overplus to the proprietor or importer. *s.* 9.

Permit on bringing in or removal.

14. No foreign spirits, although under one gallon, shall be received into the custody of any retailer, without a permit signifying that the duties were paid, or that they had been condemned; on pain of forfeiting the same, and the vessel. 8 *G.* *c.* 18. *s.* 13.

And for the better preventing foreign spirituous liquors that have been illegally imported from being removed from the sea coasts into the stocks of entred dealers or others; no seller or dealer shall be allowed to take out more than one permit in one day to one person: Which permit shall be granted for the removal of no more than one cask or other package of any foreign spirituous liquors, of one kind or species, directed to one and the same person. And if any shall be found removing or removed contrary hereto, with or without a permit, the same shall be forfeited. 23 *G.* 3. *c.* 70. *s.* 3.

Provided, that several permits may be taken out and casks sent to the same person the same day; so as each cask be sent under different permits, and by different conveyances. *s.* 4.

Provided also, that nothing herein shall prevent dealers from sending with one permit by one and the same conveyance,

veyance, any number of caſks, containing 60 gallons each or upwards. *ſ.* 5.

And if any foreign ſpirits, not being in caſks of 60 gallons or upwards, ſhall be found removing unleſs at the following times, that is, from Sep. 29, to March 25 yearly, between the hours of 7 in the morning and 5 in the evening; and from March 25 to Sep. 29, between the hours of 5 in the morning and 7 in the evening (except the ſame is carrying by a known common ſtage coach waggon or other ſtage carriage which uſually travels out of thoſe hours); the ſame ſhall be forfeited, whether accompanied with or without a permit. *ſ.* 6.

And when any dealer ſhall ſend a requeſt note to a permit writer, he ſhall ſpecify therein the quality or kind of ſuch foreign ſpirituous liquors intended to be removed with each permit, the contents of the caſk or other package, and whether the ſame is to be removed by land or water, and by what mode of conveyance; otherwiſe ſuch requeſt note ſhall be void, and no permit ſhall be granted thereon. *ſ.* 7.

If any perſon ſhall counterfeit ſuch permit, or give or receive any falſe permit, or alter any granted by the proper officer; he ſhall forfeit 500 l, to be recovered in the courts at Weſtminſter. *ſ.* 10.

15. By eleven different acts of parliament, the duties on home ſpirits ſeem to be as follows: Duty on home ſpirits.

For every gallon of low wines or ſpirits of the firſt extraction, made from malt, corn, or grain, or brewers waſh or tilts, 11 d. Strong waters or aqua vitæ, made from the ſame materials, 2 s 9 d.

For every gallon of low wines or ſpirits of the firſt extraction, made from any other kind of Britiſh materials or mixture therewith, 1 s 3^{+} d. Strong waters or aqua vitæ, 2 s 4$\frac{3}{4}$ d.

For every gallon of low wines or ſpirits of the firſt extraction, made from molaſſes, 2 s 6 d. Strong waters or aqua vitæ, 1 s 4 d.

For every gallon of low wines or ſpirits of the firſt extraction, made from any other foreign or imported materials or mixture therewith, 3 s. Strong waters or aqua vitæ, 1 s 7$\frac{1}{2}$ d.

For every gallon of ſtrong waters or aqua vitæ, made from any kind of wine or cyder imported, 2 s 1 d.

16. By the 19 *G.* 3. *c.* 50. No perſon ſhall be permitted to make entry of any workhouſe or place, or of any ſtill or utenſil for making, diſtilling, or keeping of low wines or ſpirits, unleſs he ſhall occupy a tenement of 10 l a year, and be aſſeſſed for the ſame in his own name, Entry of houſes and veſſels for diſtillation.

and also pay to the parish rates. And no entry shall be of any avail to any person not so qualified, nor for any longer time than he shall be so qualified. *s.* 3.

And by the 21 *G.* 3. *c.* 55. In order to prevent private distillations, every person, who shall make or distil any low wines or spirits, whether for sale or not for sale, shall be deemed a common distiller for sale, and shall enter his still and vessels at the next office of excise; and every person, making or keeping any wash fit for distillation, and having in his custody any still, shall also be deemed a common distiller for sale, and liable to the several duties, and subject to the survey of the officers. *s.* 34, 35.

And no common distiller or maker of low wines, spirits, or strong waters, for sale, shall set up any tun, cask, washbatch, copper, still, or other vessel, for making or keeping or keeping any worts, wash, low wines, spirits, or strong waters, nor alter nor enlarge the same, nor have any of them private or concealed, or any private warehouse, storehouse, cellar, or other place for making or keeping any the said liquors, without first giving notice at the next office of excise; on pain of 20 l, and he in whose occupation any of the same shall be shall forfeit 50 l. 8 & 9 *W.* *c.* 19. *s.* 10.

And by the 24 *G.* 2. *c.* 40. Every distiller shall ten days before he distils or makes any spirituous liquors, make entry at the next office of excise, of every still or other vessel which he shall make use of for brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, spirits, or strong waters; and also of the vessels used for brewing or keeping the after-runnings of feints from the second extraction (which last mentioned vessels shall not at any one time exceed two in number); and also of all such new utensils as he shall make use of for the purposes aforesaid; on pain of 50 l, for every such still or other vessel, used and not entred. *s* 22.

And by the 21 *G.* 3. *c.* 55. No person shall make use of any vessel, room, or place for making wash for the distillation of low wines and spirits, without giving notice at the next excise office; on pain of 50 l, for every vessel, room or other place so made use of without notice. *s.* 36.

By the 19 *G.* 3. *c.* 50. Whereas the duties on low wines and spirits are greatly diminished, by means of small stills privately made use of, it is therefore enacted, that every person keeping any wash fit for distillation, and having in his possession any still, the cubic contents of which, when the head is on, will amount to two gallons, proof thereof being made, by the oath of one witness, before one commissioner

miſſioner of exciſe or juſtice, ſhall be deemed a common diſtiller for ſale, and liable to the ſurvey and duties. *ſ.* 1.

But by the 2 *G.* 3. *c.* 5. No perſon who ſhall make or rectify any ſpirits for ſale, or who ſhall ſell or deal in any ſort of ſpirituous liquors, ſhall have any ſtill or number of ſtills, unleſs ſuch ſtill if a ſingle one, or ſuch ſtills taken together if more than one, ſhall contain at the leaſt 100 gallons; on pain to forfeit for every ſuch ſtill 100 l. And ſuch ſtills as ſhall contain ſeparately leſs than 100 gallons, ſhall be all placed in one room or workhouſe; on pain to forfeit, for every ſuch ſtill not ſo placed, 100 l. *ſ.* 4.

And by the 14 *G.* 3. *c.* 23. Every ſtill for diſtilling any ſort of fermented worts or waſh, commonly called the waſh ſtill, ſhall contain at leaſt 400 gallons in the body of the ſtill, excluſive of the head; and every ſtill for diſtilling low wines, commonly called the low wine ſtill, ſhall contain in the body thereof, excluſive of the head, at leaſt 100 gallons: on pain of forfeiting, for every ſtill containing reſpectively a leſs number of gallons, 100 l. *ſ.* 2.

17. And the diſtiller ſhall ſhew to the officer every ſtill or other veſſel entred, and the officer ſhall mark the ſame with a particular and durable mark; and every veſſel uſed by ſuch diſtiller without being ſo ſhewn or marked, ſhall be deemed a veſſel or utenſil of which no entry has been made; and if any perſon ſhall rub out or deface ſuch mark, he ſhall forfeit 20 l. 24 *G.* 2. *c.* 40. *ſ.* 22. The ſame to be marked.

And by the 19 *G.* 3. *c.* 50. Every ſuch diſtiller ſhall cauſe to be painted, in durable large characters, over the outward door of every houſe or other place uſed by him for making or keeping Britiſh made ſpirits, the words *diſtiller*, *rectifier*, or *compounder of ſpirituous liquors* (as the caſe may be); on pain of 100 l. *ſ.* 6. And if any perſon ſhall put up ſuch words without having duly made entry of all the places by him uſed for making or keeping ſuch ſpirits, he ſhall forfeit 200 l. *ſ.* 9.

And if any diſtiller or dealer ſhall buy any Britiſh made ſpirits (except at the public ſales of condemned ſpirits by the commiſſioners of exciſe) of any perſon not having the ſaid words painted over his door; he ſhall forfeit 50 l. *ſ.* 7. And in this caſe, either the buyer or ſeller, informing againſt the other, ſhall be diſcharged of his own penalty. *ſ.* 8.

And by the 21 *G.* 3. *c.* 55. If any diſtiller or dealer ſhall buy any Britiſh made ſpirits (except as above excepted), he ſhall forfeit 500 l. But not to be proſecuted both by this and by any former act. And the ſeller informing

forming againſt the buyer ſhall be diſcharged of his own penalty. *ſ.* 37, 8, 9.

Finally, Diſtillers having made entry, ſhall not be allowed to withdraw the ſame, whilſt any waſh or other materials prepared for diſtillation remain unworked. 23 *G.* 3. *c.* 70. *ſ.* 25.

Private ſtills. 18. By the 10 & 11 *W.* *c.* 4. *ſ.* 7. If any officer of exciſe ſhall have cauſe to ſuſpect any private ſtill, back, or other veſſel, ſpirits, low wines, waſh or other materials prepared for diſtillation, to be ſet up or kept in any place, and ſhall make affidavit before a juſtice of the peace, and therein declare the grounds of his ſuſpicion; he may in the day time, and in preſence of a conſtable, by warrant from ſuch juſtice to be directed to ſuch officer of exciſe, break open the door or any part of ſuch ſuſpected houſe or place, and enter and ſeize the ſame, and detain them there; and if they ſhall not in 20 days be claimed by the owner, they ſhall be forfeited, and ſold at the next general day of ſale; and if they be claimed in 20 days, the perſon claiming ſhall forfeit for every warehouſe or other place, in which any ſuch ſtill, back, or other veſſel ſhall be found, and alſo for every ſuch ſtill, back, and other veſſel found therein, 200l. And by the 10 & 11 *W.* *c.* 21. he ſhall incur this forfeiture, whether he ſhall make any ſuch claim or not. *ſ.* 23.

And by the 19 *G.* 3. *c.* 50. If any officer of exciſe ſhall at any time diſcover any private or concealed ſtill, back, or other veſſel, for the making or keeping of waſh, low wines, or ſpirits, or other materials preparing for diſtillation, he may (that is, without applying to a juſtice) ſeize ſuch ſtill, back, or veſſel, and all ſuch ſpirits, and either detain them in the houſe where found, or remove them to the next office of exciſe: And if they ſhall not within ten days be claimed by the owner, the ſame ſhall be forfeited; and the proprietor of any ſuch private or concealed back, ſtill, or other veſſel, or the perſon in whoſe cuſtody the ſame ſhall be found, ſhall forfeit for every place wherein ſuch private ſtill, back, and other veſſel ſhall be found, and alſo for every ſuch ſtill, back, and other veſſel found therein, the ſum of 200l. And if any perſon ſhall obſtruct the officer, he ſhall forfeit 100l. *ſ.* 2.

And by the 23 *G.* 3. *c.* 70. Whereas notwithſtanding the many laws to prevent the private diſtillation of low wines and ſpirits, evil minded perſons do privately make ſpirits; if any officer of exciſe ſhall know, or have cauſe to ſuſpect, that any private or concealed ſtill, back, veſſel, low wines, waſh, or other materials, preparing for diſtillation,

tillation, are ſet up or kept in any houſe or place within the limits of the head office in London, and ſhall make oath thereof before a juſtice or two of the commiſſioners, and elſewhere before a juſtice of the place, ſetting forth the ground of his ſuſpicion, they may by their warrant impower ſuch officer, by day or night, but if in the night, in preſence of a conſtable, to break open the doors or any part of ſuch houſe and ſeize the ſame, who may detain them there or remove them to the next exciſe office; and if not claimed in ten days, the ſame ſhall be forfeited, and the proprietor, or perſon in whoſe cuſtody they ſhall be found, ſhall forfeit 200l; and any perſon obſtructing ſuch officer in the ſearch, ſhall in like manner forfeit 200l. And any perſon aſſiſting in ſuch private diſtillation ſhall forfeit 30l. *ſ.* 13, 14.

But if on breaking open any ſuch door or houſe, no ſuch private back, ſtill, or other veſſel, ſpirits, low wines, waſh, or other materials for diſtillation, ſhall be found, the officer ſhall make good the houſe or place ſo broken up, or make ſatisfaction to the owner to be adjudged by the two next juſtices (1 Q.); or the party injured may bring his action for the damages; and the ſame ſhall be paid by the commiſſioners out of the revenue of exciſe; and if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 200l. 10 & 11 *W.* *c.* 4. *ſ.* 8.

And for the more effectually preventing the removal of ſpirits that have been privately diſtilled, from the places where made to the houſes of rectifiers and compounders; the officers may ſeize all horſes, carriages, and boats employed in removing the ſame from one part of the kingdom to another, unleſs they be accompanied with regular permits. 23 *G.* 3. *c.* 70. *ſ.* 15.

19. No diſtiller ſhall have any private pipe or ſtop cock, or other conveyance, by which any waſh or other liquors fit for diſtillation may be conveyed from one back or veſſel to another, or from any ſuch back or veſſel to his ſtill, or into any other place, nor ſhall have any hole in any back or waſhbatch, by which any waſh or other liquor fit for diſtillation may be conveyed into or out of the ſame; on pain of 100l. 10 & 11 *W.* *c.* 4. *ſ.* 3. Private cocks and pipes.

And the exciſe officer in the day time, and in preſence of a conſtable, on requeſt made and cauſe declared, may break up the ground in any diſtilling houſe, or the ground near adjoining, or any wall, partition, or other place, to ſearch; and on finding ſuch pipe or other conveyance, may break up the ground, houſe, wall, partition, or other place, thro' or into which any ſuch pipe or other conveyance ſhall lead, and may break or cut any ſuch

pipe

pipe or other conveyance, and may turn any cock to try whether such pipe may convey any wash or other liquor. *s.* 4.

And if no such pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (1 Q.) or the party injured may bring his action for damages; the same to be paid by the commissioners out of the revenue of excise. And if any person obstruct such officer, he shall forfeit 100 l. *s.* 5.

But any distiller may use any pipe, stop cock, or other conveyance above ground, in open view from one end to the other, for letting his wash out of the coolers into his backs or washbatches, and for conveying the wash or worts, out of the back or washbatch into the still. *s.* 6.

Holes or openings to be in the breast of the still.

20. Every distiller, rectifier, and compounder shall make (with the approbation of the surveyor or supervisor) a hole or opening in the breast of every still, that the officers may take gages and samples; which hole or opening in the wash still shall not be more than five inches square, and so contrived, that the officers may take gages thereof with a cork and rule: and in every other still, not being a wash still, the hole or opening shall not be less than one inch and an half in diameter, and so contrived that the officers may take samples from the still with a phial, to be drawn perpendicularly through the same. And if he shall presume to distil, rectify, or compound any spirits, before such holes or openings be made; he shall forfeit 50 l. 14 *G.* 3. *c.* 73. *s.* 3, 5.

Trunks and other close vessels to be demolished.

21. For the preventing of frauds being carried on by means of trunks and other close vessels set up by distillers for receiving wash and other materials fit for distillation from the wash backs and other utensils, before the same is pumped up into their stills; every distiller, whether for sale or exportation, having any such trunk or other close vessel, shall demolish or convert the same into open vessels; and if he shall hereafter erect any such, he shall forfeit 100 l. 23 *G.* 3. *c.* 70. *s.* 16.

Pipes at the end of still worms to be demolished.

22. And to the end that the officers may be able to taste and examine the quality of the low wines and spirits coming from the stills; every distiller shall cut off or take away all pipes fixed to the end of the worms belonging to their stills; and if he shall fix any there for the future, he shall forfeit 100 l. 23 *G.* 3. *c.* 70. *s.* 16.

Locks on the still heads.

23. Every distiller, rectifier, and compounder, shall at his own expence, provide and affix sufficient fastenings (to

(to be approved of in writing under the hand of the gager or ſupervisor) to the head of every low wine ſtill, waſh ſtill, waſh pumps, and charging cocks, through which worts or waſh are conveyed into ſuch ſtill: Which ſaid ſtill heads, charging cocks, and waſh pumps, ſhall from time to time be ſecurely locked and ſealed by the gager; and the locks and keys, for ſecuring the ſaid ſtill heads, charging cocks, and waſh pumps, ſhall be provided by the gager or ſurperviſor, at the expence of the diſtiller. And if the diſtiller ſhall preſume to diſtil, before he hath affixed ſuch faſtenings; he ſhall forfeit 50 l. 12 *G.* 3. *c.* 46. *ſ.* 11, 17. 14 *G.* 3. *c.* 73. *ſ.* 1.

Locks on the holes or openings.

24. And the holes or openings in the breaſt of the ſtill ſhall in like manner be locked and ſecured, under the ſames rules, regulations, and penalties as for ſecuring the ſtill heads. 14 *G.* 3. *c.* 73. *ſ.* 3, 5.

Locks on the charging and diſcharging cocks.

25. Every diſtiller ſhall (on the like pain) at his own expence, provide and affix ſufficient locks, keys, and faſtenings (to be approved of in writing under the hand of the ſurveyor or ſupervisor) to the diſcharge cock of every waſh ſtill and low wine ſtill; and the officers ſhall be permitted, if they ſee cauſe, to lock and ſecure ſuch diſcharge cocks at any time when the ſtill ſhall be at work. 14 *G.* 3. *c.* 73. *ſ.* 5.

And the diſcharge cocks ſhall be fixed in the body of each ſtill, ſo as the officers may have convenient acceſs to them; and for that purpoſe, every ſuch diſcharge cock ſhall be continued in a ſtreight line from the body of the ſtill, and not project more than three feet from the body of the ſtill, nor eighteen inches from the brick work or other materials whereon the ſtill ſhall be placed: on pain that every diſtiller offending in the premiſes ſhall forfeit 100 l. 23 *G.* 3. *c.* 70. *ſ.* 17.

And the keys of every charging and diſcharging cock ſhall be made in manner following; that is, the key ſhall be made with an open eye or hole in the top part thereof, which eye ſhall be of ſuch a ſize as to be capable of receiving a leaver ſufficient to turn the cock; and ſuch key ſhall be of one piece and ſolid to the bottom, and ſo rivetted into the cock of which it is a part, as to prevent the ſame from being taken out of the body of the cock; and ſuch charging cocks, and diſcharging cocks, ſhall not have any hole or place of diſcharge, but at the mouth only; and no grate, ſtrainer or other thing ſhall be placed before the mouth of any ſuch charge or diſcharge cock; on pain that every diſtiller offending herein, ſhall forfeit 100 l. *ſ.* 18.

And

And no distiller shall have any fixed pipe or other conveyance, leading to any still, except one charging pipe to each still; nor any conveyance leading from any such still, except the discharging cock to each still belonging; on pain of 200l. *s.* 23.

Locks on the furnace door.

26. Every distiller, rectifier, and compounder shall, on the like pain, at his own expence provide and affix sufficient locks, keys, and fastenings (to be approved of in like manner) to the furnace door of each still; and the officers shall be permitted to lock and secure the said furnace doors, at any time when the stills are not at work. 14 *G.* 3. *c.* 73. *s.* 4, 5.

Penalty of opening or damaging such locks.

27. If any person shall, by any means or device, open any fastening on the holes or openings in the breast of the still, or any discharge cock, or furnace door, after the same shall have been locked or secured by the officer; or shall wilfully hurt or damage any lock or other fastening; he shall forfeit 200 l. 14 *G.* 3. *c.* 73. *s.* 12.

Ladders to be provided.

28. The distiller shall provide proper ladders, whereby the officers may get to the top of each still, and shall by himself or some person on his behalf, assist such officer in setting up the ladder, and examining the contents of each still, and taking still gauges thereof; on pain of 200l. 23 *G.* 3. *c.* 70. *s.* 21.

Notice of taking in materials.

29. The distiller, within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, sugar, water, or any kind of fermented wash, into his custody, give notice to the officer of excise, of the quantity and species, and when he intends to receive the same; on pain of 50 l. 24 *G.* 2. *c.* 40. *s.* 24.

And by the yearly malt acts, every distiller who shall receive any quantity of cyder or perry into his custody, shall give notice in writing to the officer under whose survey he shall reside, 48 hours before he shall begin to put any of the same into the still, to be drawn into low wines or spirits; and if he shall not give such notice, or shall dispose of any quantity thereof otherwise than by distillation, he shall forfeit 5 l.

Notice of beginning to work.

30. When any distiller or maker of low wines and spirits from *corn or grain*, whose still house is under the survey of the *London* officers, or is situate in *London* or *Westminster* or within any other city, shall be desirous of opening his still, or of charging his wash still; he shall give to the officer notice in writing at least four hours before he intends to charge his still: But if he intends to open or charge it at any time between 12 in the night and 6 in

6 in the morning, he ſhall give notice at leaſt twelve hours before he intends ſo to open his low wine ſtill or waſh ſtill. And where the ſtill houſe is not ſituate in *London* or *Weſtminſter*, nor under the ſurvey of the *London* officers, nor in ſome other city, he ſhall give at leaſt twelve hours notice in writing at the next office of exciſe or to the officer of the diſtrict, of ſuch his intention of opening or charging his ſtill. And if he ſhall not begin to charge his ſtill at the hour mentioned in ſuch notice, or within two hours after, the notice ſhall be void; and he ſhall be obliged to give a freſh notice, before the officer ſhall be bound to open the head of ſuch ſtill, or the ſaid charge cocks, or waſh pumps, ſo locked as aforeſaid. 12 *G.* 3. *c.* 46. *ſ.* 12, 13.

And the like notice ſhall be given, when ſuch *corn* diſtiller ſhall be deſirous to have the furnace door of his ſtill unlocked. 14 *G.* 3. *c.* 73. *ſ.* 6.

And when any diſtiller or maker of low wines or ſpirits from *molaſſes, or other materials not being corn or grain*, or any rectifier or compounder of ſpirits, ſhall be deſirous to charge his waſh ſtill; he ſhall, within the bills, give to the officer notice in writing four hours at leaſt, and elſewhere eight hours, of the particular hour or time of the day, when he intends to charge ſuch ſtill: And when he is deſirous to have the furnace of his ſtill opened; he ſhall, if within the bills, give twelve hours notice, and elſewhere 24 hours, of the particular hour or time of the day or night, when he intends to have the ſame opened. Which notices for charging the waſh ſtills of ſuch diſtillers of molaſſes or other materials not being corn or grain, and alſo for opening the furnace doors, ſhall be given at the times following; *viz.* from Sept. 29, to Mar. 25, yearly, between the hours of ſeven in the morning and five in the evening; and from Mar. 25, to Sept. 29, between the hours of five in the morning and five in the evening.—And if ſuch diſtiller ſhall not begin to charge his waſh ſtill at the time mentioned in ſuch notice, or within one hour after; the notice ſhall be void, and he ſhall be obliged to give another like notice, before the officer ſhall be obliged to attend. 14 *G.* 3. *c.* 73. *ſ.* 6.

And every diſtiller, in the notice of his intention to charge his waſh ſtill, ſhall expreſs the particular waſh-batch or waſhbatches from which he intends to charge his ſtill, deſcribing the number and marks thereof; otherwiſe the notice ſhall be void. And if he ſhall charge his waſh ſtill from any waſhbatch not mentioned in ſuch notice; or ſhall take out of any ſtill any feints or ſpent waſh contrary

trary to the directions of this act: he ſhall forfeit 100l. 14 *G.* 3. *c.* 73. *ſ.* 7, 8.

Officers may take ſamples of waſh.

31. And for the further preventing frauds, the officer ſhall be permitted to take ſamples of the waſh in any waſh back or other veſſel, not exceeding 12 gallons in the whole out of each ſuch waſh back or veſſel; paying for the ſame at the rate of 1 s 6 d a gallon: and if the diſtiller ſhall obſtruct or hinder him, he ſhall forfeit 100l. 23 *G.* 3. *c.* 70. *ſ.* 22.

Diſtiller making uſe of improper materials.

32. If any corn diſtiller, or maker of low wines or ſpirits from corn or grain, ſhall make uſe of any molaſſes, coarſe ſugar, honey, or any compoſition or extract of ſugar, in the brewing or preparing his waſh for diſtillation, or ſhall receive any of the ſaid materials into his cuſtody exceeding 10 lb weight; he ſhall forfeit 100l: And if any ſervant or other perſon ſhall aſſiſt therein, he ſhall forfeit 20l, and in default of payment ſhall ſuffer 3 months impriſonment. 23 *G.* 3. *c.* 70. *ſ.* 24.

And if any diſtiller, in preparing his griſt for waſh, in order for diſtillation, ſhall uſe more wheat, than in the proportion of one quarter of wheat to two quarters of any other grain; he ſhall forfeit 50l. 33 *G.* 2. *c.* 9. *ſ.* 23.

Officer to attend and ſurvey.

33. And the officer ſhall from time to time attend, according to the notice given. 12 *G.* 3. *c.* 46. *ſ.* 14.

Provided, that where notices are given by more than one diſtiller, rectifier, or compounder, each of them expreſſing the ſame hour or time for the officer to attend; it ſhall be ſufficient, if he attend at the workhouſe of any one of them, according to the notice, or within one hour after. 14 *G.* 3. *c.* 73. *ſ.* 11.

And as ſoon as the officer ſhall be at the ſtill houſe, the diſtiller ſhall turn the diſcharge cock of every waſh ſtill, that the officer may be ſatisfied that ſuch waſh ſtill is really empty; and then, and not before, the officer ſhall open the ſtills, cocks, and pumps ſo locked and ſecured, and ſhall continue in the ſtill houſe all the time that ſuch waſh ſtill ſhall be charging; and when the ſame ſhall be fully charged, ſhall immediately lock and ſecure as before, all the ſtill heads, waſh pumps, and charging cocks, and ſhall leave them ſo locked and ſecured at all times. 12 *G.* 3. *c.* 46. *ſ.* 14.

And ſo often as it ſhall be found neceſſary to have ſuch ſtill heads, or charge cocks, or waſh pumps open, for repairing or mending the ſame; the officer ſhall attend all the time the workmen ſhall be employed in ſuch repairing; and ſhall lock the ſame every night; and ſhall attend at ſix o'clock each morning, whilſt the repairs are doing, to open the ſaid ſtills, charge cocks, and pumps. *ſ.* 15.

And

And no ſuch diſtiller ſhall have any pipe or conveyance to the low wine ſtills, from any other veſſel or utenſil, except the known and entred low wine caſk; on pain of 100 l. *ſ.* 16.

And if any perſon ſhall open any ſtill head, charge cock, or waſh pump, after the ſame ſhall have been locked and ſecured as aforeſaid, before the ſame ſhall have been opened by the officer of exciſe; or ſhall wilfully hurt or damage any ſuch lock or other faſtening; he ſhall forfeit 200 l. *ſ.* 18.

And by the 14 *G.* 3. *c.* 73. Whenever the diſtiller ſhall be deſirous to light a fire under the ſtill, and to have the furnace door opened; the officer ſhall attend according to the notice given, and open the ſame. *ſ.* 4.

And he ſhall be permitted to take ſtill gages, as well of ſpent waſh and feints, as of the charge of the waſh ſtill, at any time after the ſtill is charged, and before it comes to work; and alſo to take ſamples of the ſame at any time after the ſtill is charged and before it comes to work, and alſo after the ſtill is off, paying if demanded, after the rate of 1 s 6 d a gallon for the waſh, and 4 d a gallon for ſpent waſh and feints. And if, in taking ſuch gage or ſample, he ſhall diſcover that any waſh hath been put into any ſtill except the known waſh ſtill, or into the waſh ſtill without ſuch notice as aforeſaid; or ſhall find any increaſe in ſuch ſtill, more than can be accounted for by the compare with the decreaſe from the waſhbatch expreſſed in the notice; or if, on comparing the quantity of low wines charged, with the ſpent waſh remaining in the waſh ſtill, he ſhall find a greater proportion than could ariſe from the quantity of waſh taken account of in the waſhbatches pumped into the waſh ſtill: ſuch increaſe ſhall be deemed to be made from ſome waſhbatch not mentioned in the notice, and the officer ſhall charge the diſtiller with double duty from the preſumptive charge; and no allowance ſhall be made to him for any feints, water or other liquor, on any pretence put into the waſh ſtill, but ſuch as ſhall have been put therein in the view of the officer. *ſ.* 9.

And if the officer ſhall diſcover at the ſtill houſe, in any ſtill other than the known waſh ſtill, any waſh put into or mixed with the low wines or ſpirits in ſuch ſtill; every diſtiller, rectifier, or compounder offending herein, ſhall forfeit 100 l. *ſ.* 10.

And if any perſon ſhall obſtruct any officer in the execution of this act, he ſhall forfeit 100 l. *ſ.* 13.

And by the 23 *G.* 3. *c.* 70. Whenever the officer ſhall have received notice for opening the furnace door of any

ſtill

ſtill belonging to any rectifier or compounder, and ſhall attend for that purpoſe, ſuch officer ſhall not on any pretence open the furnace door of any ſuch ſtill, but of ſuch as are at that time fully charged, nor until he hath examined the contents of ſuch ſtill, and hath ſeen the head put on and ready to be locked down; nor ſhall ſuch officer, when attending on any ſuch notice at the ſtill houſe of any ſuch rectifier or compounder, be obliged to continue there more than one hour at a time; and if ſuch rectifier or compounder ſhall not within that time have charged the ſtill or ſtills mentioned in that notice, and put on the head of the ſtill, ſo as they be ready to be locked down, he ſhall be obliged to give another notice before the officer ſhall be obliged to attend again. *ſ.* 20.

Officer to charge or materials miſſing.

34. The officer may keep an account of the ſeveral ſorts of waſh which ſhould be found by him in the hands of a diſtiller, and upon any decreaſe of ſuch waſh brewed or made from malted corn or corn unmalted, may charge ſuch diſtiller, with ſo much low wines or ſpirits of the firſt extraction as one fourth part of the ſame waſh ſo decreaſed ſhall amount unto; and alſo with ſo much proof ſpirits or ſpirits of the ſecond extraction, as three fifth parts of the ſaid low wines ſo charged ſhall amount unto: and alſo upon any decreaſe of waſh made from cyder or perry, may charge ſuch diſtiller upon whom ſuch decreaſe ſhall be found, with ſo much low wines or ſpirits of the firſt extraction, as one fifth part of the ſame waſh ſo decreaſed ſhall amount unto; and likewiſe with ſo much proof ſpirits, or ſpirits of the ſecond extraction, as one half part of the ſame low wines or ſpirits of the ſecond extraction ſhall amount unto. 4 *An. c.* 12. *ſ.* 4.

When the ſtill has done working the head ſhall be taken off.

35. Every rectifier and compounder ſhall take off the head of each ſtill, as ſoon as the ſame ſhall have done working; and it ſhall in no caſe be put on, until it ſhall be again charged and ready to work; nor until the officer ſhall have examined the quality of the ſpirits then in each ſuch ſtill; on pain that ſuch rectifier or compounder offending herein ſhall forfeit 100 l. 23 *G.* 3. *c.* 70. *ſ.* 19.

Entry and payment of the duties.

36. The diſtiller ſhall weekly make entry of all waſh by him uſed for the making of low wines and ſpirits within each week, on pain of 10 l: And within a week after, ſhall pay off the duties, on pain of double duty. 19 *G.* 3. *c.* 50. *ſ.* 4, 5.

Carrying out of the ſtill houſe.

37. No diſtiller ſhall deliver or carry out any low wines, ſpirits, or aqua vitæ, to any of their cuſtomers, in caſk, or by the gallon, without notice thereof firſt given to the officer of exciſe, unleſs from *Sep.* 29, to *Mar.* 25, yearly, between five in the morning and eight in the evening,

evening, and from *Mar.* 25, to *Sep.* 29, yearly, between three in the morning and nine in the evening; on pain of 10l. 7 & 8 *W.* *c.* 30. *ſ.* 15.

38. By the 9 *G.* 2. *c.* 23. Every perſon who ſhall retail leſs than two gallons, ſhall ten days before make entry in writing of all warehouſes, ſhops, cellars, or other places by him intended to be uſed, at the next exciſe office; and of all ſpirituous liquors therein; on pain of 20l for every place, and 40s for every gallon not entred, and alſo the liquors and caſks. *ſ.* 6. Retailers houſes to be entred and marked.

And by the 19 *G.* 3. *c.* 69. Every importer for ſale or dealer in foreign ſpirituous liquors, who ſhall ſell the ſame either by wholeſale or retail, ſhall cauſe to be painted in large legible characters, over the outer door, or in the front, or on ſome conſpicuous part of every houſe, ſhop, warehouſe, cellar, vault, or other place, ſo uſed by him, the words *importer of*, or *dealer in*, *ſpirituous liquors*; on pain of 50l. *ſ.* 18.

And if any importer or dealer in foreign ſpirituous liquors ſhall buy any foreign ſpirituous liquors of any other perſon than of an importer or dealer over the door of whoſe ſhop or other place the words aforeſaid ſhall be written or painted; he ſhall forfeit 100l.——Provided, that ſuch dealer ſhall not be ſubject to the ſaid penalty, by reaſon of the purchaſe of any foreign ſpirituous liquors whilſt they remain on board the ſhips wherein they were lawfully imported, or on the quays on which they have been lawfully landed; nor to the purchaſe of any rum whilſt it remains in the warehouſe, according to the act of 15 & 16 *G.* 2.; nor of any arrack, whilſt it remains in the warehouſes of the *Eaſt India* company; nor to the purchaſe of any prize foreign ſpirituous liquors; nor of any foreign ſpirituous liquors ſold for the benefit of the inſurers or proprietors to defray the charges of ſalvage. *ſ.* 19, 20.

And if any perſon, other than ſuch as hath made entry as aforeſaid, ſhall paint over his door the words aforementioned, he ſhall forfeit 50l, over and above the penalties for ſelling or dealing without entry. *ſ.* 21.

And if any perſon, not being ſuch importer or dealer ſhall buy any of the ſaid goods (except as before excepted), not having the aforementioned words painted over his door; he ſhall forfeit 10l: And if the ſeller ſhall, within 20 days, and before any information hath been lodged againſt him, inform againſt the buyer, he ſhall be diſcharged from all penalties to which he might be liable for ſuch his own offence. *ſ.* 22.

Retailer to give notice of bringing in.

39. And no ſpirituous liquors ſhall be brought into any ſuch warehouſe or other place, without firſt giving notice to the officer of exciſe: and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expreſſing the quantity and quality, the name of the ſeller, and where the duties were paid, or the liquors condemned; on pain of of forfeiting 20 l, and alſo the liquors and caſks. 9 *G.* 2. *c.* 23. *ſ.* 7.

Britiſh to be kept ſeparate from foreign ſpirits.

40. All dealers in foreign brandy or ſpirits, who ſhall receive into their cuſtody *Britiſh* ſpirits, ſhall keep the ſame in ſeparate cellars, or other places, from their foreign brandy or ſpirits; on pain of 10 s for every gallon of *Britiſh* ſpirits found in the ſame place with the foreign ſpirits, together with the caſks in which the ſaid *Britiſh* ſpirits ſhall be found. 8 *G. c.* 18. *ſ.* 11.

Officers may take ſamples in the ſhop or warehouſe.

41. It ſhall be lawful for the officers of exciſe, to take ſamples, not exceeding half a pint in the whole, out of each caſk or other package containing foreign ſpirituous liquors, in any ſhop, warehouſe, or other place, belonging to any dealer in the ſame; paying for ſuch ſample (if demanded) according to the market price liquor of the like quality ſhall be ſold for at the time of ſuch ſample taken. 32 *G.* 2. *c.* 29. *ſ.* 2.

Retailer increaſing the liquors.

42. No retailer ſhall make any increaſe of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40 s a gallon, and the liquors ſo mixed ſhall be ſeized and forfeited. 9 *G.* 2. *c.* 23. *ſ.* 8.

And if the officer of exciſe ſhall find any increaſe of *foreign* ſpirits, over and above the quantity which he found at any dealer's on the laſt ſurvey, ſuch increaſe ſhall be deemed to be made by foreign ſpirits for which no duty was paid; and ſo much as ſhall be found increaſed, ſhall together with the caſk be forfeited, unleſs the owner make it appear, that the increaſe was made by mixing therewith in the preſence of the officer of the diviſion, ſome of his ſtock of *Britiſh* ſpirits whereof the officer had taken an account, or by foreign ſpirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 *G. c.* 18. *ſ.* 12.

And by the 21 *G.* 3. *c.* 55. If the officer ſhall find any increaſe in the ſtock of any dealer in or ſeller of ſpirituous liquors, over and above the quantity which he found at his laſt ſurvey; ſuch increaſe, whether mixed or unmixed, ſhall be deemed to be made by a commodity for which no duty has been paid. And ſo much of the ſtock as ſhall be found increaſed ſhall be forfeited, and a quan-

tity equal to the increaſed quantity ſhall be ſeized by the officer, and the perſon in whoſe ſtock ſuch increaſe ſhall be found ſhall forfeit 20 l. Provided, that if ſuch increaſe be found in the ſtock of a dealer in Britiſh ſpirits, the ſame ſhall not be forfeited, if ſuch increaſe was made by mixing water therewith in preſence of the officer of the diviſion. *ſ.* 29, 30.

Retailer concealing.

43. The officer at all times by day or night (but if in the night in preſence of a conſtable, oath being firſt made before a juſtice dwelling near of a probable cauſe of ſuſpecting a concealment) may enter into all ſuch warehouſes, ſhops, or other places, and by taſting, gaging, or otherwiſe, take an account of the quantity and quality; and if any ſuch retailer ſhall hinder the officer, he ſhall forfeit 50 l. 9 *G.* 2. *c.* 23. *ſ.* 9.

None to be ſold but in entred places.

44. And no ſuch liquors ſhall be ſold, but in ſuch warehouſe, ſhop, cellar, or other place, ſo entred; on pain of 40 s a gallon. 6 *G. c.* 21. *ſ.* 15.

And by the 11 *G. c.* 30. No *arrack*, whether *Britiſh* or foreign, ſhall be offered to ſale, either by wholeſale or retail, but in an entred place; on pain of forfeiting the ſame, with the caſks or other veſſels, beſides the ſaid penalty of 40 s a gallon. *ſ.* 3.

Who ſhall be deemed a ſeller and dealer.

45. Every perſon who ſhall have in his cuſtody above 63 gallons, ſhall be deemed a ſeller and dealer in ſuch liquors. 6 *G. c.* 21. *ſ.* 18.

Licence for retailing.

46. No perſon ſhall retail any diſtilled ſpirituous liquors or ſtrong waters, mixed or unmixed, without a licence taken out ten day before, for which he ſhall pay 40 s yearly; if within the bills, from two commiſſioners of exciſe; elſewhere, from the collectors and ſupervifors within their reſpective diſtricts. 16 *G.* 2. *c.* 8. *ſ.* 8. 24 G. 2. *c.* 40. *ſ.* 9.

And every perſon who ſhall retail ſpirituous liquors mixed or unmixed, to be drank in any quantity whatſoever, in any place to him belonging; or ſhall retail or ſend the ſame abroad in leſs quantity than two gallons, ſhall be deemed a *retailer*. 17 *G.* 2. *c.* 17. *ſ.* 20.

Who only ſhall have licences.

47. And no ſuch licence ſhall be granted, except to ſuch perſons only who keep taverns, victualling houſes, inns, coffee-houſes, or alehouſes; and all other licences ſhall be void; and if any licenſed perſon ſhall exerciſe the trade of a diſtiller, grocer, or chandler, or keep a brandy ſhop for ſale of ſpirituous liquors, the licence ſhall be void. 17 *G.* 2. *c.* 17. *ſ.* 19.

And no licence ſhall be granted within the limits of the head office of exciſe in *London*, but to ſuch as occupy tenements of 10 l a year, and pay pariſh rates for the

ſame; or in places where the occupiers of houſes are not rated to the church and poor, then to ſuch perſons as pay rent of 12 l a year, and not otherwiſe; nor to perſons in any other part of the kingdom, but ſuch as pay to the church and poor: And no licence ſhall be of any avail longer than he ſhall be ſo qualified. 24 *G.* 2. *c.* 40. *ſ.* 12. 26 *G.* 2. *c.* 13. *ſ.* 9.

To be firſt licenſed to ſell ale.

48. And ſuch perſon ſhall alſo be firſt licenſed to ſell ale or ſpirituous liquors, by two or more juſtices of the peace. 16 *G.* 2. *c.* 8. *ſ.* 11.

And the juſtices of the peace, and other officers, ſhall have the ſame juriſdiction over ſuch retailers of ſpirituous liquors, as they have over alehouſekeepers. 12 & 13 *W.* *c.* 11. *ſ.* 18. 2 *G.* 2. *c.* 28. *ſ.* 10.

To be licenſed only where they dwell.

49. And no licence ſhall impower any perſon to ſell ſpirituous liquors in any place, except in the houſe or places thereto belonging, wherein they ſhall inhabit at the time of granting the licence. 17 *G.* 2. *c.* 17. *ſ.* 22.

Penalty of ſelling without licence.

50. Perſons retailing without licence ſhall forfeit 10 l, and on non-payment when demanded, one juſtice on oath of ſuch neglect ſhall commit the offender to the houſe of correction, to be kept to hard labour for two months, or till paid. 16 *G.* 2. *c.* 8. *ſ.* 9.

And the ſaid penalty ſhall in no caſe be mitigated below the ſum of 5 l. 24 *G.* 2. *c.* 40. *ſ.* 11. 26 *G.* 2. *c.* 13. *ſ.* 8.

And the juſtices may, if they think proper, inſtead of levying the penalty commit the offender to the houſe of correction, to be kept to hard labour for two months. 17 *G.* 2. *c.* 17. *ſ.* 18. 9 *G.* 3. *c.* 6. *ſ.* 3.

And alſo all the diſtilled ſpirituous liquors that ſhall be then, or at any time within ſix months after conviction, found in his cuſtody, houſe, or other place occupied therewith, whether it be in his own occupation or not, ſhall by warrant of the ſaid commiſſioners, or of one juſtice, be ſeized, and ſtaved, or otherwiſe deſtroyed: And any peace or pariſh officer, authorized by ſuch warrant, may at any time in ſix months after conviction enter ſuch places, and break open doors, if not opened on demand. And if any perſon ſhall offend again in like manner, the commiſſioners or juſtices before whom he ſhall be convicted of ſuch ſubſequent offences, may inflict the penalties by any former law to be inflicted for ſuch offence, and alſo commit the offender to the houſe of correction, to be kept to hard labour not exceeding three months. 24 *G.* 2. *c.* 40. *ſ.* 13. 9 *G.* 3. *c.* 6. *ſ.* 3.

And the conviction ſhall be in this form, or to the like effect, *viz.*

Middleſex.

Middleſex. A. B. *is convicted on his own confeſſion* (or *on the oath of* A. W.) *of having ſold ſtrong waters in the pariſh of* ——— *in this county, on the* ——— *day of* ——— *without being duly licenſed thereto: This is the firſt or ſecond conviction. Given under my hand and ſeal,* &c.

And the commiſſioners, or one juſtice, on oath of any offence againſt this act, or any other act for regulating the retailing of ſpirituous liquors, may grant a warrant to any of the peace officers, or other pariſh officers, to enter and ſearch the houſes and other places, where the offence ſhall be ſworn to have been committed, or in the occupation of the perſons ſworn to be guilty thereof, and they may break open the doors if not opened on demand, and ſeize all ſuch diſtilled ſpirituous liquors as they ſhall there find, and detain the ſame, till the offence ſhall be heard and determined; and if the offender be convicted, the liquors ſhall be forthwith ſtaved; and if he be not convicted, the ſame ſhall be reſtored. 24 *G.* 2. *c.* 40. *ſ.* 14.

And whereas the aforeſaid penalty of 10 l is ſometimes inſufficient to deter offenders, it is enacted by the 13 *G.* 3. *c.* 56. that if any perſon ſhall, by himſelf, or by any other to his benefit, retail any diſtilled ſpirituous liquors without licence; he ſhall forfeit 50 l: To be recovered, levied, and mitigated by any law of exciſe, or in the courts at Weſtminſter. Provided, that no perſon proſecuted by any former act, ſhall be proſecuted for the ſame offence by this act. And provided, that the ſaid penalty ſhall not be mitigated below the ſum of 5 l.

Hawking in the ſtreets.

51. No perſon ſhall hawk, ſell, or expoſe to ſale any ſpirituous liquors about the ſtreets, highways, or fields, in any wheel-barrow or baſket, or on the water in any boat, or in any other manner; or ſhall ſell or expoſe the ame to ſale, on any bulk, ſtall or ſhed, or any other place other than as above is allowed; on pain of 10 l. And one juſtice on his own view, or confeſſion, or proof of one witneſs, may convict him; whereupon be ſhall immediately pay the 10 l to a churchwarden or overſeer: And on refuſal or neglect, the juſtice ſhall commit him to the houſe of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he ſhall not be diſcharged till he pay the ſum, or till the two months be expired. If there is no informer, it ſhall be wholly to the uſe of the poor; otherwiſe half to the informer, and half to the poor. 9 *G.* 2. *c.* 23. *ſ.* 13.

And any one juſtice, on information on oath againſt ſuch perſon, may (without any previous ſummons) iſſue

his warrant for apprehending and bringing him before ſome juſtice where the offence was committed. 11 *G.* 2. *c.* 26. *ſ.* 4.

And any perſon may ſeize and detain him, until he may give notice to the conſtable, churchwarden, overſeer, or other peace or pariſh officer; who ſhall carry the perſon ſo ſeized and detained, before a juſtice of the peace, who ſhall proceed thereon as in caſe where he is brought by the conſtable. 11 *G.* 2. *c.* 26. *ſ.* 5.

M. 13 *G.* 2. *K.* and *Crofts.* A woman was convicted for ſelling gin, and it appearing that ſhe was a feme covert, it was objected that ſhe could not be convicted, for as ſhe could make no contract, it muſt be taken to be her huſband's ſale; or if ſhe could be convicted, the huſband ought to have been joined for conformity. It was anſwered, that where the crime is of ſuch a nature, as can be committed by her alone, ſhe may be proſecuted without her huſband; which being a proceeding grounded merely on the breach of the law, he ſhall not be included, unleſs privy: In this caſe there may be impriſonment and being kept to hard labour. And by the court, We think the conviction is right; for this is not like the caſes that ſound only in damages. The wife may be convicted for recuſancy. And though ſhe cannot have the benefit of the contract, yet ſhe as well as the ſervant may do the act of vending. Beſides, there would be a plain way to evade the act, if femes covert could not be convicted. *Str.* 1121.

Occupier of the houſe ſhall be liable.

52. If any leſs quantity than two gallons ſhall be ſold or delivered in any clandeſtine manner, to any perſon, in any houſe, outhouſe, ſtable, barn, ſhed, or other place, part of or belonging to any houſe or farm; in ſuch caſe, the occupier or occupiers (if more than one) conſenting thereto, ſhall be deemed retailers, and forfeit as ſelling without licence. 11 *G.* 2. *c.* 26. *ſ.* 1.

Perſons giving away ſpirituous liquors.

53. Perſons giving away ſpirituous liqours, to ſervants or apprentices fetching goods from their ſhops, ſhall be deemed retailers. 9 *G.* 2. *c.* 23. *ſ.* 16.

Paying wages in ſpirituous liquors.

54. If any maſter or other perſon ſhall agree to pay any workman, ſervant, or labourer, or other perſon employed by him or for him, ſo much money for wages, and ſo much ſpirituous liquors, as together with the money ſhall amount to the value of the wages uſually paid in like caſes; or ſhall ſet off or deduct any part of the wages, for any ſpirituous liquors; he ſhall be deemed a retailer, and forfeit 20 l. over and above the other penalties, and ſuch ſervant ſhall be intitled to his whole wages. 9 *G.* 2. *c.* 23. *ſ.* 11.

55. But

55. But nothing herein ſhall extend to phyſicians or apothecaries ſelling the ſame as medicines. 9 *G.* 2. *c.* 23. *ſ.* 12. 16 *G.* 2. *c.* 8. *ſ.* 12. Apothecaries ſelling ſpirituous liquors.

56. No licence ſhall be granted for retailing of any ſpirituous liquors, within any gaol, priſon, or houſe of correction, workhouſe, or houſe of entertainment for pariſh poor; and if any keeper of ſuch priſon or houſe ſhall ſell, uſe, lend, or give away, or knowingly ſuffer any ſpirituous liquors or ſtrong waters to be ſold, uſed, lent, or given away in any ſuch gaols or houſes, or brought into the ſame, except ſuch as ſhall be preſcribed by the direction of a regular phyſician, ſurgeon, or apothecary, from the ſhop of ſome regular apothecary, —— he ſhall forfeit 100 l, half to the king, and half (with full coſts) to him who ſhall ſue in the courts at *Weſtminſter*. And if any ſuch perſon ſhall offend again in like manner, and be a ſecond time convicted; he ſhall forfeit his office. 24 *G.* 2. *c.* 40. *ſ.* 17. Selling in gaols or workhouſes.

And any juſtice, on information on oath that ſpirituous liquors or ſtrong waters are kept and diſpoſed of in any ſuch priſon or other place, may enter and ſearch, or impower by warrant any conſtable to ſearch for and ſeize all ſuch liquors as ſhall be found (except ſuch as are directed to be uſed medicinally) and to ſtave and deſtroy the ſame. *ſ.* 18.

And if any perſon ſhall bring, or endeavour to bring any ſuch liquors (except in the way of medicine as before mentioned) into any ſuch gaol or other place, the gaoler or his ſervants may apprehend and carry ſuch offender before any juſtice of the peace, who ſhall hear and determine ſuch offence in a ſummary way; and if by the oath of one witneſs, or otherwiſe, ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine not exceeding 20 l, and not leſs than 10 l, as the juſtice ſhall impoſe, to be paid half to the informer, and half to the poor of ſuch priſon or workhouſe. *ſ.* 19.

And the gaoler, keeper, maſter, or other officer, ſhall procure a copy of the three preceding clauſes, to be printed or fairly written, and hung up in one of the moſt publick places of his gaol, houſe of correction, or workhouſe aforeſaid, and renew the ſame from time to time, ſo that it be always kept fair and legible; on pain of 40 s, by warrant of one juſtice, on oath of one witneſs. And any juſtice may enter and demand a ſight of it, and if it ſhall not be ſhewn to him hung up in ſome publick place fair and legible; he ſhall immediately convict ſuch perſon,

and ſo from time to time as often as he ſhall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of ſuch gaol or other place. *ſ.* 20.

Recovering debt for ſpirituous liquors.

57. No perſon ſhall recover any debt on account of ſpirituous liquors, unleſs it ſhall *bona fide* have been contracted at one time to the amount of 20 s or upwards; nor ſhall any particular article in any account be allowed, where the liquors delivered at one time, ſhall not amount to the full value of 20 s, and where no part of the liquors ſo ſold ſhall be agreed to be returned; and if any retailer, with or without a licence, ſhall take any pawn by way of ſecurity for payment of any money for ſuch liquors, he ſhall forfeit 40 s, by warrant of one juſtice, half to the poor, and half to the informer; and the owner ſhall have ſuch remedy for recovering ſuch pawn, as if it had never been pledged. 24 *G.* 2. *c.* 40. *ſ.* 16.

Diſtill'er delivering to unlicenſed retailers.

58. If any diſtiller or other perſon ſhall knowingly ſell or deliver any diſtilled ſpirituous liquors, that the ſame may be unlawfully retailed, or to any unlicenſed retailer; he ſhall forfeit 10 l, and treble value of the liquors, half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*. And if any perſon guilty of retailing ſuch liquors, ſhall diſcover the diſtiller or perſon who knowingly ſupplied him therewith, and proſecute him to conviction, he ſhall be intitled to his ſhare of the penalty, and indemnified againſt all penalties incurred by him before that time, for ſelling ſpirituous liquors without licence. 24 *G.* 2. *c.* 40. *ſ.* 15.

Riotouſly reſcuing offenders, or aſſaulting informers.

59. If any perſons to the number of five or more, ſhall in a tumultuous and riotous manner aſſemble to reſcue any offenders againſt any act relating to ſpirituous liquors, or for licenſing the retailers thereof, or to aſſault any perſon who ſhall have given or is about to give any information againſt, or ſhall have diſcovered or given evidence againſt, or ſhall ſeize or bring to juſtice any offender; he, his aiders and abettors ſhall be guilty of felony, and tranſported for ſeven years. 24 *G.* 2. *c.* 40. *ſ.* 32.

Permit for removal after ſale

60. Where any ſuch liquors ſhall be ſold in any ſuch entred place, the officer ſhall on requeſt of the ſeller (without fee) give the buyer a certificate ſigned by him, expreſſing the quantity, the name of the buyer and ſeller, and that the duty hath been paid, or that it hath been condemned as forfeited. 6 *G.* *c.* 21. *ſ.* 16.

And no ſuch liquor, exceeding one gallon, ſhall be carried without ſuch certificate or permit; on pain of forfeiting the ſame with the caſks and veſſels. *ſ.* 17.

And if any perſon ſhall take out a permit, and not remove the liquors accordingly, nor return the permit; he

ſhall

ſhall forfeit treble value: And if there appears not a ſufficient decreaſe in the ſtock, to anſwer the quantity in the permit, the officer may ſeize ſo much as will anſwer the quantity. But no perſon ſhall receive a permit, without direction in writing of the perſon (or his ſervant) from whoſe ſtock the goods are to be removed; on pain of 50l, and in default of payment, three months impriſonment. 11 *G.* *c.* 30. *ſ.* 10.

Selling without a permit, or pedlars with one

61. If any perſon ſhall offer any ſpirituous liquors to ſale, not having a permit; or if any pedlar or other trading perſon, going from town to town, or other mens houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch liquors to ſale, altho' he have a permit: the perſon to whom they are offered to ſale, may ſeize and detain ſuch liquors, and carry them to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice, to be by him committed to priſon, and proſecuted for the penalties incurred for ſuch offence; and ſuch liquors may be proſecuted in the name of the perſon who ſtopped or ſeized the ſame, in like manner as if they had been ſeized by an officer. 9 *G.* 2. *c.* 35. *ſ.* 20.

Officer neglecting to ſeize.

62. When any officer of the cuſtoms ſhall neglect to ſeize and proſecute any veſſel, boat, horſes, or other cattle or carriage, forfeited for running of brandy, and ſhall be convicted thereof on his appearance or default, by oath of one witneſs, or confeſſion; he ſhall forfeit 50l. 6 *G.* 2. *c.* 17. *ſ.* 10.

Conſtable neglecting his duty.

63. If any conſtable or other peace officer, ſhall refuſe or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 *G.* 2. or 10 *G.* 2. herein mentioned; he ſhall, on conviction by the oath of one witneſs, forfeit 20l. 11 *G.* 2. *c.* 26. *ſ.* 7.

Carrying coaſtwiſe.

64. All low wines or ſpirits carried coaſtwiſe, without a certificate from the officer of exciſe where they were made, that the duty hath been paid, ſhall be forfeited, and ſeized by the officers where they ſhall be brought in. 3 *G.* *c.* 4. *ſ.* 17.

Shipped as ſtores.

65. By the former acts, it was generally provided, that home ſpirits might be exported, and a drawback of the duties was to be allowed thereupon.

But by the 6 *G.* 2. *c.* 17. for ſpirits drawn from *Britiſh* corn, there was to be allowed a drawback by the exciſe officers at the port of ſhipping, of 4l 18s a ton, in full of all drawbacks: Except that from every ton of ſpirits drawn from barley malt, or other corn, there ſhall be paid by the officers of the cuſtoms, when barley is 24s a quarter, or under 1l 10s, in like manner as for corn exported. *ſ.* 7, 8.

And

And by the 33 *G.* 2. *c.* 9. there was to be an additional drawback of 24*l* 10*s* a ton, on all *British* made ſpirits exported; oath being made before two commiſſioners of exciſe or juſtices of the peace, that the duties were paid, and that the ſame were to be exported for *merchandize* to be ſpent beyond the ſeas. *ſ.* 15.

And by the ſaid act of the 33 *G.* 2. *c.* 9. it is further enacted, that the ſame drawbacks and allowances ſhall be made on ſpirits ſhipped as *ſtores*, to be ſpent on ſhipboard, on giving five days notice thereof to the commiſſioners of exciſe or to whom they ſhall appoint, mentioning therein the deſtination of the voyage, the tonage of the ſhip, and the number of mariners intended to be employed; which ſaid commiſſioners, or perſon appointed by them, ſhall aſcertain the quantity of ſuch ſpirits which ſhall be ſhipped on board ſuch veſſel as ſtores, and the ſize and marks of the caſks in which ſuch ſpirits ſhall be ſhipped. And on oath being made before one commiſſioner or juſtice of the peace, or other perſon authorized by the commiſſioners, that the duties are paid, and that the ſame are to be ſhipped as ſtores to be ſpent in the voyage; and on certificate from the officer of exciſe where ſuch ſpirits were ſhipped of the quantity ſo ſhipped, and that the ſame were proof ſpirits, and ſhipped in the preſence of ſuch officer, the duty ſhall be allowed or paid back. *ſ.* 15.

Provided, that no drawback ſhall be allowed for ſpirits ſhipped as *ſtores*, in any veſſel of leſs than 100 tons burden. *ſ.* 16.

And if any ſuch ſpirits ſhipped for *ſtores*, ſhall be relanded in *Great Britain*, *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, unleſs in caſe of diſtreſs to ſave the goods from periſhing (of which notice ſhall immediately be given to the proper officer); then, not only all ſuch ſpirits and the caſks or other package ſhall be forfeited, but alſo the perſon who ſhall bring, or procure ſuch ſpirits to be relanded or ſhall be aſſiſting or otherwiſe concerned in unſhipping the ſame, or to whoſe hands the ſame ſhall knowingly come after the unſhipping, or by whoſe privity or direction the ſame ſhall be relanded, ſhall forfeit double the amount of the drawback, and alſo the caſks and other package, together with the veſſels and boats, and all the horſes or other cattle and carriages whatſoever, made uſe of in landing, removing, or carrying the ſame; which may be ſeized by any officer of the cuſtoms or exciſe. Maſter aſſiſting therein, or conniving thereat, ſhall (over and above all other penalties) be impriſoned for ſix months. And if the package ſhall be altered at any time after

after the shipping thereof, and before the arrival of the ship at the place of discharge; the master, or other person taking charge of the vessel, shall forfeit 100*l*. *s.* 18.

And whereas spirits shipped for stores are frequently concealed from the officers, on pretence of being put underneath other goods; all spirits shipped for stores, shall, during the time the vessel shall be in port, be openly stowed and kept, so that the officers may at any time examine the same; on pain of forfeiting double the duty of all such stores which shall not be so stowed and kept, or produced and shewn to the officers of excise, according to the rate such spirits would have been charged with if made for home consumption. 2 *G.* 3. *c.* 5. *s.* 21.

Exportation duty free.

66. No wash which shall be brewed or made for the making of low wines in order to extract spirits for *exportation*, nor any such low wines or spirits, shall be chargeable with any duties of excise; and all drawbacks thereupon, whether payable by the commissioners of excise or customs shall cease. 2 *G.* 3. *c.* 5. *s.* 5, 6.

Entry of houses and vessels for making spirits for exportation.

67. Every distiller intending to make or distil spirits for exportation, shall, four days at the least before he shall begin to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation,—make a particular entry at the next office of excise, of every still, copper, ton, washbatch, cask, or other vessel, which he shall make use of for the brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, or spirits; and also of the casks or vessels which he shall make use of for the brewing, holding, or keeping of the after-running or feints from the second extraction which shall from time to time be drawn from every such still; and also of every workhouse, stillhouse, storehouse, warehouse, or other place, by him used for the preparing, distilling, or keeping wash, low wines, or spirits; and in such entry shall insert the day when he intends to begin first to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation; and shall afterwards, from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise, or with the officer for the division, four hours at least before he shall begin any such subsequent brewing or mixing, and shall insert in such notice the hour when he intends to begin; and shall also, from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise or with the said officer,

officer, four hours at leaſt befote any waſh is pumped up or otherwiſe conveyed into the ſtill, and ſhall inſert in ſuch notice the hour when he intends to begin; on pain of 100l for every offence. And if after ſuch entry ſo made, he ſhall not begin and proceed to brew or mix his materials as aforeſaid, on the day mentioned in ſuch entry or within four hours afterwards; or having given ſuch notice, ſhall not begin and proceed in ſuch operations at the hour and time mentioned in ſuch notice, or in two hours afterwards; ſuch notice ſhall be void: and if he ſhall proceed without freſh entry or notice reſpectively, he ſhall forfeit the like ſum of 100l. 2 *G.* 3. *c.* 5. *ſ.* 7.

Provided, that nothing herein ſhall extend to permit or authorize any diſtiller or make entry of his intention to make ſpirits for exportation, whoſe waſh ſtill will not contain 1600 gallons, and the ſpirit or low wine ſtill 800 gallons. *ſ.* 8.

Neither ſhall any diſtiller be permitted to diſtil ſpirits for exportation, altho' he may have made entry as aforeſaid, unleſs he ſhall actually have diſtilled into ſpirits all the waſh and low wines in his cuſtody for making of ſpirits for home conſumption, at leaſt 48 hours before the day mentioned in ſuch entry. *id.*

Provided, that when any diſtiller ſhall be deſirous of diſtilling any ſpirits for home conſumption, and ſhall have actually diſtilled into ſpirits all the waſh, low wines, and feints in his poſſeſſion for the making of ſpirits for exportation, and ſuch ſpirits ſhall be locked up in the warehouſe as herein after is directed; he may withdraw his entry for exportation, and be at liberty to make a freſh and like entry for making ſpirits for home conſumption; and after ſix days from ſuch entry made, he may begin to brew or mix materials for waſh to be diſtilled into ſpirits for home conſumption: And if he ſhall begin contrary hereunto, he ſhall forfeit 200l. *ſ.* 9.

Manner of making and warehouſing for exportation.

68. And no waſh that ſhall be brewed or mixed for the extracting of ſpirits for exportation, ſhall be pumped up into the ſtill, or otherwiſe removed from the back or veſſel wherein the ſame was fermented, but in the preſence of an officer; and ſuch diſtiller ſhall run or draw off his low wines immediately from the ſtill into entred veſſels only, and continue them therein, ſo that the officers may take a true gage of ſuch low wines; and ſuch diſtiller ſhall provide a proper caſk which ſhall be duly entred and gaged, into which the ſpirits ſhall immediately run from the ſtill, which caſk ſhall be ſufficient to contain

tain the whole produce of ſpirits to be extracted from each ſtill when made up to the proper ſtrength ſuch ſpirits are required to be; and when the whole quantity of ſpirits ſhall be collected in ſuch caſk from each ſtill, ſuch diſtiller ſhall immediately make up ſuch ſpirits in the preſence of the officer, to the ſtrength of one to ſix under hydrometer proof: And a true gage of ſuch ſpirits ſo made up ſhall then be taken by the officer. And the ſaid ſpirits ſhall immediately afterwards be put into caſks, and ſecured in the preſence of the officer in a warehouſe to be provided and kept by the diſtiller, and duly entred at the proper office of exciſe; which ſpirits ſhall be kept there ſeparate from all ſpirits made for home conſumption; and no ſpirits for home conſumption ſhall be put into the ſame warehouſe; and ſuch warehouſe ſhall be ſecured under three locks, one to be provided by the diſtiller, and the other two by the officer of exciſe at the expence of the diſtiller; whereof one key to be kept by the diſtiller, another by the ſuperviſor, and the third by the officer of exciſe, until the ſpirits ſhall be delivered out for rectification, or afterwards for exportation; which warehouſe ſhall be ſecured to the ſatisfaction of the ſuperviſor ſignified under his hand: and if any diſtiller for exportation ſhall act contrary to theſe directions; or ſhall obſtruct the officer in gaging, or in taking ſamples, or in trying the proof of the ſpirits (which gages, ſamples, and trials of proof the officers ſhall make as often as the commiſſioners ſhall direct, the ſamples to be returned when the commiſſioners ſhall find it expedient to give directions for that purpoſe); or ſhall open any of the locks in the abſence of the officer, or make any way into ſuch warehouſe, or remove any part of the partition of it, or make any addition to, or any way alter the ſame, without notice to the ſuperviſor and his conſent in writing firſt had; or ſhall remove any of the ſaid ſpirits from the warehouſe, before the ſame ſhall be taken out for immediate rectification or exportation; or ſhall remove or conceal any waſh or low wines for making ſpirits for exportation, or any ſuch ſpirits, whether raw, or rectified, either before the ſame are put into the warehouſe or afterwards; he ſhall forfeit 500 l. 2 *G.* 3. *c.* 5. *ſ.* 10.

But this ſhall not hinder any maker of ſpirits for exportation, from ſending ſuch ſpirits out of his locked warehouſe to any other diſtiller: provided ſuch maker and diſtiller give bond in double value of the ſpirits, and double duty which they would have been liable to if made for home conſumption, for the due exportation thereof within

within three months; and provided leave in writing be obtained from the commissioners; and four hours notice thereof at least be given to the officer, that he may receive the same into such distiller's stock; and provided such spirits be removed with a proper certificate from an excise officer: And such distiller shall thereafter be liable to the same penalties for breach of directions, as the maker would have been. *s.* 11.

And to prevent distillers from working in the absence of the officers; every such distiller shall permit the officer to secure the heads of the stills, when the stills are not at work; and also the pumps for charging the stills and emptying the low wine and spirit cask, so as to prevent the same from being used in the absence of the officer; and also to secure the lid or head of the low wine and spirit casks, and the safe at the end of the worm, to prevent any spirits or low wines from being secreted, whilst the still is at work. *s.* 18.

Taking out of the warehouse for rectifying, or exportation.

69. No raw unrectified spirits shall be permitted to be exported. And when any distiller for exportation shall be desirous to take any of his spirits out of the warehouse in order to be rectified, or when rectified, and again deposited in the warehouse, in order to be immediately shipped for exportation, he shall thereof give four hours notice in writing to the supervisor or officer of excise, and shall insert in such notice the day and hour when he intends so to do, and also the quantity and quality of spirits he desires to take out, and whether such spirits are raw or rectified, and out of what warehouse, and whether the same are for rectification and by whom, or for immediate exportation, or to be sent coastways, and to whom and to what port, and whether for merchandize or stores: And the supervisor or officer shall attend and see the quantity taken out, and take an account of the same. And if such distiller shall not begin and proceed to take the spirits out of the warehouse at the time mentioned in the notice, or within two hours after, such notice shall be void; and he shall give a fresh notice four hours at least before he shall begin to take the said spirits out of the warehouse. And if he shall make default in any of the said particulars, he shall forfeit 100*l.* 2 *G.* 3. *c.* 5. *s.* 11.

And when any raw spirits shall be so taken out in pursuance of such notice, the same shall be immediately pumped up, or put in the presence of the officer into the still or stills, and be rectified forthwith, and the spirits shall be run off immediately from the still into a like cask as is before directed to be provided and entred for the containing

ing of ſpirits immediately diſtilled from low wines; and when the whole quantity of ſpirits deſigned to be made into brandy ſhall be collected into ſuch caſk from each ſtill, the ſame ſhall be immediately made up in the preſence of the officer to the ſtrength of one to ſix under hydrometer proof, at which ſtrength all ſpirits are to be exported; and a gage of ſuch ſpirits ſo made up ſhall then be taken by the officer, who ſhall keep an account thereof; and ſuch ſpirits ſhall immediately afterwards be put into caſks, and in the preſence of the officer either carried directly on ſhipboard for exportation (if intended to be immediately exported), or elſe into ſuch warehouſe to be locked up in manner aforeſaid. 2 *G.* 3. *c.* 5. *ſ.* 13.

And if it ſhall happen, that the ſpirits diſtilled for exportation in one day belonging to any diſtiller, cannot for want of time be conveyed from the ſpirit caſk (into which they are directed to be run immediately from the ſtill) and locked up in the warehouſe; the officer ſhall gage the ſame, and ſecure the lid of the ſaid ſpirit caſk, and take ſamples thereof: which ſpirits ſhall be locked up in the warehouſe the next morning (if not intended for immediate exportation). And if it ſhall appear, that any decreaſe has been made in the quantity or quality of the ſaid ſpirits ſo gaged; or if any ſuch ſpirits ſhall have been removed in the abſence of the officer; the diſtiller ſhall be charged for the ſaid ſpirits ſo decreaſed or removed, double the duties which they would have been charged with if made for home conſumption. *ſ.* 14.

Taking out for home conſumption.

70. By ſeveral former acts, ſpirits made for exportation were permitted (under certain regulations) to be taken out of the warehouſe for home conſumption; but now, by the 21 *G.* 3. *c.* 55. no ſpirits made for exportation ſhall, in any caſe whatever, be delivered out of the warehouſe for home conſumption. *ſ.* 33.

To be returned to the warehouſe after rectifying.

71. When any quantity of raw ſpirits ſhall, in purſuance of any notice, be delivered out of the warehouſe, in order to rectify the ſame; as many gallons of rectified ſpirits, and of the ſame ſtrength when made up, ſhall be produced, as ſuch quantity amounted to when taken out of the warehouſe, allowing only for the feints. And the commiſſioners ſhall make juſt allowances for neceſſary waſte, and the difference that will ariſe between gaging and weighing ſpirits. Which feints ſhall alſo be run off from the ſtill directly into one large feint caſk, and ſhall be immediately gaged as ſoon as the ſtill is off, and an account thereof taken by the officer, and kept in ſtock by him; who may take ſamples of ſuch feints. Which feints

ſhall

ſhall be in like manner locked up in the warehouſe, and ſhall be there put into one or more large caſks to be provided by the diſtiller, and marked with the word *Feints*. And every ſuch diſtiller ſhall, once a month at leaſt, diſtill all his feints, and make up the ſpirits to be produced therefrom of the ſtrength of one to ſix under hydrometer proof. And all ſuch ſpirits ſhall then be locked up, or exported as other ſpirits for exportation are hereby directed to be. 2 *G.* 3. *c.* 5. *ſ.* 17.

And by the 21 *G.* 3. *c.* 55. The diſtiller ſhall be allowed after the rate of ſix gallons for every ton, in full compenſation for all waſte, loſs, or damage (except in caſe of unavoidable accidents); and all decreaſe above that proportion ſhall be charged with double the duty which the ſpirits would have been charged with, if they had been made for home conſumption. *ſ.* 32.

Penalty for ſpirits miſſing.

72. By the 2 *G.* 3. *c.* 5. If any decreaſe ſhall be found in the *waſh* brewed or made for the diſtilling of ſpirits for exportation (except ſuch decreaſe as ſhall be made appear to the commiſſioners to have really and truly riſen from accidents); the officer ſhall charge double duty for the ſame, calculating ſuch waſh ſo found to be decreaſed, to produce the ſame quantity of low wines and ſpirits as waſh is preſumed to do when ſpirits are made for home conſumption: And if any decreaſe ſhall appear in the ſtock of *ſpirits* made for exportation, except ſuch as may be accounted for by certificate of the officer either as being exported for merchandize or for ſtores, or as being taken out for home conſumption on payment of duties by conſent of the commiſſioners, or by any allowance the commiſſioners ſhall have made for waſte or for any difference which may have ariſen between gage and weight, or by being ſent coaſtwiſe for exportation, or by being ſent with the conſent of the commiſſioners to any other diſtiller in order to be rectified for exportation; the officer ſhall charge for all the ſpirits ſo decreaſed, double the duty ſuch ſpirits would have been charged with if made for home conſumption. *ſ.* 18.

And by the 21 *G.* 3. *c.* 55. For the better enabling the officers to make true charges on the apparent decreaſes of waſh diſcovered at the ſtill houſe of every diſtiller making ſpirits for exportation, every ſuch diſtiller, who between October 1, and June 1, yearly, ſhall diſtil ſpirits for exportation, ſhall for every ſix gallons of waſh produce to the officer one gallon of ſpirits; and between June 1, and October 1, for every ſeven gallons of waſh, one gallon of ſpirits: Otherwiſe they ſhall be charged for all the waſh miſſing, over and above the ſaid ſix gallons,

gallons and ſeven gallons, as for ſpirits made for home conſumption. *ſ.* 31.

73. When ſpirits made for exportation ſhall be delivered out of the warehouſe, to be ſent *coaſtwiſe* (with a certificate from the proper officer) in order for exportation; the diſtiller ſhall, on taking out the ſame, give bond in double the value of the ſpirits, and double the duties which are payable for the like ſpirits diſtilled for home conſumption, that the ſame ſhall (the danger of the ſeas and enemies excepted) be really and truly landed in ſuch port of this kingdom for which the ſame ſhall be entred. And ſuch bonds ſhall not be diſcharged or delivered up, till a certificate ſhall be produced from the chief officer of exciſe of the port for which ſuch ſpirits were entred, teſtifying the landing thereof, and deſcribing the number of the caſks or other package, and the marks and the quantity of ſpirits landed; and alſo teſtifying, that the maſter, mate, purſer or other perſon having charge of the veſſel, had made oath before him, that the ſaid ſpirits were fairly landed there, and that at the time of landing they were of the ſame quality as when ſhipped on board, and that no part of ſuch ſpirits had been wilfully or fraudulently diminiſhed, relanded, or unſhipped ſince the ſame were put on board; and alſo, teſtifying, that the ſame were really, and truly, ſince their arrival there, exported from thence to foreign parts: and the condition of all ſuch coaſt bonds ſhall be, to produce ſuch certificate in ſix months from the date thereof. And ſuch ſpirits ſo to be ſent coaſtwiſe, when landed at the port for which they were entred, ſhall be immediately put into a proper warehouſe, and there continued until the ſame ſhall be exported, and ſhall be ſecured by the perſon to whom they are ſent, and by the ſaid chief officer, by two locks and keys to be provided by the perſon to whom the ſpirits were ſent, one key to be kept by the ſaid perſon, and the other by the officer. And all maſters, commanders, and other perſons belonging to any veſſel carrying goods coaſtwiſe, who ſhall aſſiſt or connive at the fraudulent landing, embezilling, or diminiſhing any ſpirits ſent coaſtwiſe, and all other perſons concerned in unſhipping the ſame, or to whoſe hands the ſame ſhall knowingly come, ſhall be ſubject to all penalties and forfeitures inflicted by any former act for inforcing the fair exportation of ſpirits to foreign parts. 2 G. 3. *c.* 5. *ſ.* 19.

Delivered out for carrying coaſtwiſe for exportation.

74. When any ſpirits made for exportation ſhall be entred for *Ireland*, or his majeſty's plantations in *America*, or

Bond to be given on exportation.

or any other parts beyond the ſeas in *Europe*, or any parts in *Africa* or *Aſia*; the exporter thereof, when the whole quantity of ſpirits intended at that time to be exported ſhall be ſhipped, ſhall immediately give bond in double value of the ſpirits entred for exportation, and double the duties ſuch ſpirits ought to have paid if they had been made for home conſumption, that the ſame ſhall (the danger of the ſeas and enemies excepted) be landed at the place of deſtination, and until ſuch bond ſhall be entred into by the exporter, the diſtiller from whoſe warehouſe ſuch ſpirits were ſent ſhall be charged for ſuch quantity of ſpirits ſo ſhipped for exportation, with double the duty ſuch ſpirits would have been charged with if made for home conſumption, and ſuch charge ſhall not be diſcharged till ſuch bond ſhall be given; and ſuch bond ſhall not be diſcharged, till a certificate be produced from the proper officer abroad, of the due landing thereof, and of oath being made before him by the maſter or other perſon having charge of the veſſel that the ſame had not been fraudulently diminiſhed, relanded, or unſhipped; and until oath ſhall alſo be made by the exporter at home, that to the beſt of his knowledge or belief, the ſame were diſpoſed of at the place referred to in the certificate: and the condition of the bond ſhall be, to produce ſuch certificate from *Ireland* in 6 months, from *America* in 18 months, from other parts of *Europe* in 15 months, from *Africa* in 18 months, and from *Aſia* in 3 years, danger of the ſeas and enemies excepted. 2 *G.* 3. *c.* 5. *ſ.* 21, 22.

Bounty on exportation.

75. For the encouragement of the exportation of ſpirits made from *corn*; there ſhall be a bounty of 3*l* 12*s* for every ton of ſpirits made from corn, which ſhall be exported as merchandize. And on oath made before two commiſſioners of exciſe, or juſtices of the peace for the place from which ſuch ſpirits are intended to be exported, that the ſame were drawn and made in *Great Britain* from corn under the regulations of this act, and not mixed with any other materials except what were neceſſary for rectifying the ſame, and that ſince the making thereof the ſame have been properly ſecured in a warehouſe according to the directions of this act, and that the ſame are to be exported for merchandize to be ſpent beyond the ſeas; and on producing a certificate under the hand of the officer of exciſe for the port or place where ſuch ſpirits were ſhipped, of the quantities ſo ſhipped, and that the ſame were ſhipped in the preſence of ſuch officer; the diſtiller ſhall be paid by the commiſſioners of exciſe, or their

their collector for the port or place where ſuch ſpirits ſhall be ſhipped, the ſaid bounty of 3l 12s a ton, and ſo in proportion for a greater or leſs quantity. 2 *G.* 3. *c.* 5. *ſ.* 20.

Provided, that no drawback ſhall be allowed, for any *Britiſh* made ſpirits, exported as merchandize, in any caſk containing leſs than 100 gallons, or in any veſſel of leſs burthen than 100 tons. 33 *G.* 2. *c.* 9. *ſ.* 16. —Except to *Africa* and *Newfoundland*; unto which places they may be exported as merchandize, in any veſſel not being of leſs burthen than 70 tons. 6 *G.* 3. *c.* 46. *ſ.* 9.

Exportation of rum.

76. On the exportation of rum or ſpirits of the produce of the *Britiſh* plantations in *America*, as merchandize, in lieu of all former drawbacks, all the duties of cuſtom ſhall be drawn back: and rum exported from the rum warehouſe, before payment of the exciſe duties, ſhall be diſcharged of the ſaid duties of exciſe. 33 *G.* 2. *c.* 28. *ſ.* 1, 2.

And on oath made before two commiſſioners or juſtices, that the rum is to be exported for merchandize to be ſpent beyond the ſeas; and on producing a certificate from the exciſe officer of the quantity ſhipped, and that a certificate was produced from the proper officer of delivery from the warehouſe on bond being given for the due exportation thereof, and alſo upon delivery of ſuch laſt mentioned certificate, the perſon having cuſtody of the bond for payment of the duties ſhall deliver it up; or if only a part of the rum contained in the bond ſhall be certified to be ſhipped off, then ſuch quantity ſhall be indorſed upon the bond. 33 *G.* 2. *c.* 28. *ſ.* 1, 2. 8 *G.* 3. *c.* 25. *ſ.* 7.

Provided, that the ſaid drawback ſhall not be allowed for any rum exported in any caſk containing leſs than 100 gallons, or ſhipped on board any veſſel of leſs burden than 100 tons (except to *Africa*, *Ireland*, and *Newfoundland*; unto which places they may be exported as merchandize, in any veſſel not being of leſs burden than 70 tons, 6 *G.* 3. *c.* 46. *ſ.* 9); or exported from any port not being the port of its importation. 33 *G.* 2. *c.* 28. *ſ.* 6.

And if after delivery from the ſaid warehouſe any rum ſhall be concealed; or not ſhipped within 12 hours; or the caſks or package be opened, or any part taken out, or the quality be altered; all ſuch rum ſhall be forfeited with the caſks and package, and may be ſeized by any officer of exciſe; and the bond for exportation ſhall be put in ſuit, unleſs the commiſſioners ſee cauſe to forbear the ſame. *ſ.* 8.

By the 19 *G.* 3. *c.* 22. a like drawback ſhall be allowed for two years, for rum exported *as ſtores* to be

ſpent in the voyage.—Which by 21 *G.* 3. *c.* 29. is continued to Apr. 1. 1783.

Power of the juſtices.

77. All the penalties not herein otherwiſe directed, ſhall be ſued for and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and be half to the king, and half to the informer or proſecutor. 24 *G.* 2. *c.* 40. *ſ.* 33.

Reward where no penalty is levied.

78. And where the retailer is ſent to the houſe of correction, the commiſſioners ſhall cauſe rewards, not exceeding 5 l, to be paid to the informers. 17 *G.* 2. *c.* 17. *ſ.* 21.

Limitation of actions.

79. No informations ſhall be brought againſt a diſtiller, for any falſe or miſentry, or offence, but within three months after the offence committed; and notice thereof ſhall be given to the party in writing, or left at his dwelling houſe, within a week after laying the information. 12 & 13 *W.* *c.* 11. *ſ.* 17.

Sale after condemnation.

80. And the commiſſioners ſhall cauſe all foreign exciſeable liquors, ſeized for non-payment of duty, or for being prohibited to be imported, to be publickly ſold, after condemnation, to the beſt bidder, at ſuch places as they ſhall think proper. 12 *G.* *c.* 28. *ſ.* 1.

Utenſils liable.

81. And all ſtills, worms, and ſtill heads, and other veſſels and utenſils for diſtilling, by whomſoever they ſhall be claimed, ſhall be liable to arrears. 7 & 8 *W.* *c.* 30. *ſ.* 13.

Conviction to be kept amongſt the records of the ſeſſions.

82. The juſtices within the limits of the head office of exciſe in *London*, ſhall once in every month tranſmit to the clerk of the peace, a certificate of all perſons convicted before them for any offences againſt this or any former act relating to ſpirituous liquors, or for licenſing the retailers thereof; who ſhall keep and enter the ſame among the records of the court: which certificate ſhall be evidence upon any information relating to ſpirituous liquors. 24 *G.* 2. *c.* 40. *ſ.* 21.

XVI. Starch and hair powder.

Duty on ſtarch imported.

1. By the 10 *An.* *c.* 26. and 12 *An.* *ſt.* 2. *c.* 9. For all ſtarch imported ſhall be paid 4 d a pound, over and above all other duties.

And all hair powder made of ſtarch, or other powder that will ſerve for the ſame uſes as ſtarch, ſhall on importation pay the ſame duties, as foreign ſtarch imported. 3 *G.* *c.* 4. *ſ.* 14.

And by the 20 *G.* 3. *c.* 52. For all ſtarch, and hair powder made of ſtarch, or other powder that will ſerve for the ſame uſes as ſtarch, imported, ſhall be paid an additional duty of 2 d a pound.

2. And

2. And by the ſaid acts of 10 *An.* *c.* 26. and 12 *An.* *ſt.* 2. *c.* 9. For all ſtarch made in Great Britain, a duty ſhall be paid of 3d a pound. And by the 20 *G.* 3. *c.* 52. an additional duty of 1 d. Duty on home ſtarch.

3. For the management of which duties on home ſtarch the commiſſioners of the treaſury ſhall appoint commiſſioners, who ſhall ſubſtitute inferior officers. 10 *An.* *c.* 26. *ſ.* 9. Officers for theſe duties.

4. No perſon, within the limits of the head office of exciſe in *London*, ſhall be a maker of ſtarch, unleſs he occupies a tenement of 10l a year or upward, and for which he ſhall be aſſeſſed in his own name, and alſo pay to the poor rates: and elſewhere, unleſs he pay to church and poor. 19 *G.* 3. *c.* 40. *ſ.* 3. Who ſhall be a maker of ſtarch.

5. And no maker of ſtarch ſhall ſet up or uſe any workhouſe, ſtorehouſe, room, or other place, for making, drying, or keeping of ſtarch, or for the converting or keeping any flour, meal, or other materials proper to be made into ſtarch, or uſe any fat, trough, box, ſtove, utenſil or other veſſel for making of ſtarch; without notice thereof being firſt given in writing at the next office for the ſaid duties: all which rooms and places, veſſels and utenſils, ſhall be marked and numbred, at the diſcretion of the ſurveyor or ſupervifor, at the expence of the maker. And if ſuch maker ſhall make default herein, he ſhall forfeit 50l. 10 *An.* *c.* 26. *ſ.* 10. 19 *G.* 3. *c.* 40. *ſ.* 12. Places of making to be entred.

And a ſummons left at the place where diſcovery ſhall be made of ſuch offence, directed to the perſon proſecuted, by his right or aſſumed name; ſhall be as effectual as if delivered perſonally, and directed to him by his proper name. 5 *G.* 3. *c.* 43. *ſ.* 19.

And all flour, meal, and other materials, found in any private workhouſe, or other place, and all private utenſils, and veſſels for making or keeping ſtarch, for which no entry ſhall be made, or notice given, ſhall be forfeited, or the value thereof. 10 *An.* *c.* 26. *ſ.* 22.

6. And the officer ſhall at all times by day or night, and if in the night in preſence of a conſtable, be permitted on requeſt to enter the houſe, workhouſe, warehouſe, or other place uſed by any maker of ſtarch; and by gaging or weighing the ſtarch, and gaging the boxes and other utenſils, or otherwiſe, to take an account of the quantity; and thereof ſhall make return in writing to the commiſſioners, leaving a true copy, if demanded, under his hand, with the maker; and if he ſhall not leave ſuch copy (after demand in writing, 12 *G.* *c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. 10 *An.* *c.* 26. *ſ.* 14. Officers to enter and ſurvey.

Obſtructing the officer.

7. And if the maker ſhall obſtruct ſuch officer in the execution of his duty, he ſhall forfeit 50 l. 19 *G.* 3. *c.* 40. *ſ.* 21.

Notice of emptying the vats.

8. The maker, before he begins to empty or waſh out any of the vats by him uſed in preparing or making of ſtarch, ſhall give to the officer 12 hours notice if within the bills, elſewhere 24 hours, of the particular time and hour when he intends to begin: and if he ſhall not begin at the hour, or within two hours after, the notice ſhall be void. And if he ſhall begin without giving ſuch notice, he ſhall forfeit 100 l. 19 *G.* 3. *c.* 40. *ſ.* 6.

And he ſhall (on the like pain) give notice in writing to the officer of the particular hour or time of the day, when he finiſhed the emptying or waſhing out of each vat. And as ſoon as the vats ſhall be emptied, and the waters put into frames or tubs uſed for preparing and making the ſame into ſtarch, the ſaid waters ſhall remain therein undiſturbed for 48 hours at leaſt, and during that time the ſlimes and waſh ſhall not be taken off the ſame. *ſ.* 7.

And if the maker, whilſt the ſtarch is in operation, and under water, mix any of the ſtarch waters of one making, with thoſe of another making, he ſhall forfeit 100 l, except the mixing be made in preſence of an officer. *ſ.* 18.

Notice of taking the waters out of the tubs.

9. When the maker ſhall be deſirous to take off from the ſour waters the ſlimes or waſh ſo put into the frames or tubs, after the ſame ſhall have remained undiſturbed for 48 hours, he ſhall give to the officer 12 hours notice within the bills, elſewhere 24 hours, of the particular time and hour when he intends to take off ſuch ſlimes and waſh. And if he ſhall not begin at the time, or within two hours after, the notice ſhall be void. And if he ſhall begin without giving ſuch notice, he ſhall forfeit 100 l. 19 *G.* 3. *c.* 40. *ſ.* 8.

And when the ſlime ſhall be taken off as aforeſaid, and put into any tubs or other utenſils, the ſame ſhall remain in ſuch tubs or utenſils for 24 hours. And if the maker ſhall diſturb the ſame during the ſaid times of 48 hours and 24 hours reſpectively, he ſhall forfeit 100 l. *ſ.* 9.

Boxing.

10. The maker ſhall uſe regular, ſquare, or oblong boxes only, for boxing and draining his green ſtarch, before it is dried in the ſtove, on pain of 10 l. 4 *G.* 2. *c.* 14. *ſ.* 1.

And he ſhall, if within the bills, give 12 hours, elſewhere 24 hours notice in writing to the officer, of his intention to put any green ſtarch into ſuch boxes: And he ſhall, in ſuch notice expreſs the particular frame or tub from which he intends to box any ſtarch; and that, when

when he ſhall begin to box, he ſhall continue to proceed to box the ſame, till the whole quantity in ſuch frame or tub ſhall be boxed: And if he ſhall neglect to give ſuch notice, or ſhall not proceed or continue after ſuch notice given; he ſhall forfeit 200 l. 4 *G.* 2. *c.* 14. *ſ.* 1. 19 *G.* 3. *c.* 40. *ſ.* 11.

And if the charge be made by gaging it before it be dried in the ſtove; then every box of green ſtarch, or ſtarch before it be dried, containing 57 inches in length, and 10 inches in breadth, and eight inches in depth, or in the whole 4560 ſolid inches, ſhall be eſteemed 131 pounds averdupois, of ſtarch dried and perfectly made. 1 *G. ſt.* 1. *c.* 2. *ſ.* 6.

And if the officer ſhall miſs any quantity of ſtarch, of which an account had been taken by gauge, whilſt the ſame was in the ſour waters or ſlimes, and before it hath been put into the boxes; he may charge the maker according to ſuch gauge taken. 19 *G.* 3. *c.* 40. *ſ.* 10.

Drying in the ſtove.

11. When the maker ſhall have broken the ſtarch from his boxes, he ſhall deliver to the officer an account in writing of the true number of pieces broken from ſuch box, diſtinguiſhing the ſize of the different pieces, under the denominations of large, middling and ſmall; and how many pieces of each denomination are contained in each breaking from the boxes. And whenever he ſhall put his ſtarch, when ſcraped, or when put into the papers, into the ſtove for drying the ſame, he ſhall place the ſeveral pieces ſo put into the ſtove in ſuch manner, as that the officers may have acceſs to and be able to count the ſame. And he ſhall provide ladders, and aſſiſt the officer in taking an account of the ſaid ſeveral pieces in the ſtove; and he ſhall not, for two hours after the officer hath entred the ſtove, ſtir the fire under the ſtove, nor throw upon the pan of ſuch ſtove any dirt, meal, or other ingredient, whereby a ſmoke may be raiſed, or the officer hindred in counting the pieces. And if he ſhall offend in any of the premiſſes, he ſhall forfeit 200 l. 19 *G.* 3. *c.* 40. *ſ.* 13, 14, 15.

And when the maker intends to break down any piece into ſcrapings or otherwiſe, he ſhall give to the officer 12 hours notice, if within the bills, elſewhere 24 hours, of the particular time and hour when he intends to break down ſuch pieces: And if he ſhall not begin at the time, or within two hours after, the notice ſhall be void. And if he ſhall begin, without giving ſuch notice, he ſhall forfeit 100 l. *ſ.* 16.

And if the officer ſhall find in the ſtove any piece or pieces drying, of which no account had been taken in the

box, the ſame ſhall be deemed ſtarch whereof no account had been taken; and the maker ſhall forfeit for every offence 100 l. *ſ.* 17.

Maker to keep ſcales and weights.

12. And the maker ſhall keep juſt ſcales and weights at the place where he makes his ſtarch, and permit and aſſiſt the officer to make uſe thereof; on pain of 10 l. 10 *An. c.* 26. *ſ.* 16.

And by the 10 *G.* 3. *c.* 44. if he ſhall uſe inſufficient ſcales or weights, he ſhall forfeit 100 l: but not to be proſecuted both on this and the former act.

Removing before ſurveyed.

13. No maker of ſtarch ſhall remove any ſtarch of which no account hath been taken by the officer, from the place where it was made; without giving to the officer within the bills 24 hours notice, and elſewhere two days notice. 10 *An. c.* 26. *ſ.* 19.

And by 19 *G.* 3. *c.* 40. If he ſhall remove any ſtarch after it is dried, out of the ſtove or drying place, before it has been weighed and taken account of by the officers; he ſhall forfeit 200 l. *ſ.* 19.

Concealing.

14. If any officer of the duties upon ſtarch or of the cuſtoms, ſhall have any cauſe to ſuſpect that ſtarch is privately making in any place, or concealed; then upon oath made before any commiſſioner or juſtice reſiding near, ſetting forth the ground of his ſuſpicion, ſuch commiſſioner or juſtice may iſſue his warrant, to authorize ſuch officer by day or night (but if in the night, in preſence of a conſtable) to enter ſuch ſuſpected place, and ſeize and carry away the ſame, with the materials, as forfeited, together with the boxes and other things containing it: and unleſs the party make it appear that the duty has been paid, he ſhall forfeit 50 l; and if any perſon obſtruct the officer, he ſhall forfeit 100 l. 4 *G.* 2. *c.* 14. *ſ.* 4. 23 *G.* 2. *c.* 21. *ſ.* 34.

And by the 19 *G.* 3. *c.* 40. If the maker ſhall conceal any ſtarch with intent to deceive his majeſty of the duties, he ſhall forfeit 100 l. *ſ.* 20.

Officer to charge for materials miſſing.

15. The officer ſhall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into ſtarch, that ſhall be in the poſſeſſion of the maker; and if he ſhall miſs any ſuch materials, which he had taken an account of the laſt time he was there, and ſhall not on reaſonable demand, receive ſatisfaction what is become thereof, he may charge the maker with ſuch quantity of ſtarch, as ſuch materials ſo miſſing in his judgment would reaſonably have made, not exceeding 25 pounds weight of ſtarch, for every buſhel of ſuch ingredients mixed or unmixed. 10 *An. c.* 26. *ſ.* 17.

16. The

16. The maker ſhall keep all ſtarch by him made and not ſurveyed, ſeparate from other ſtarch which hath been ſurveyed, for 24 hours after making within the bills, and for two days elſewhere, unleſs it ſhall be ſooner ſurveyed; on pain of 5l. 10 *An.* *c.* 26. *ſ.* 20. Starch unſurveyed to be kept ſeparate.

17. The maker ſhall weekly make entry in writing at the next office, of all the ſtarch by him made within each week, ſetting forth the weight, and how much was made at each time; on pain of 50 l. Which entry ſhall be on oath of the maker, or his chief workman, according to the beſt of his knowledge and belief, before ſuch officer as ſhall be appointed by the commiſſioners within the bills, and elſewhere before the collector and ſupervisor. 10 *An.* *c.* 26. *ſ.* 11. 19 *G.* 3. *c.* 40. *ſ.* 3. Entry of ſtarch made.

But he ſhall not be obliged to go further, either to make entry or payment, than to the next market town. 19 *G.* 3. *c.* 40. *ſ.* 5.

18. The maker within the bills, ſhall within four weeks, and elſewhere within ſix weeks after entry, clear off the duties; on pain of double duty: And no maker, after default in payment, ſhall ſell or deliver out any ſtarch until he hath cleared off the duty; on pain of double value. 10 *An.* *c.* 26. *ſ.* 13. Payment of the duties.

19. Cocquets granted for ſhipping ſtarch, to be landed in any other part of the kingdom, ſhall expreſs the quality, quantity, and weight, the mark of the package, and by whom made and ſold, and where conſigned; and if ſhipped without ſuch cocquet, it ſhall be forfeited and ſeized, together with the package. 23 *G.* 2. *c.* 21. *ſ.* 29. Carrying it coaſtwiſe.

20. No ſtarch ſhall be *imported* otherwiſe than in ſome package, containing at leaſt 224 pounds of neat ſtarch, and ſtowed openly in the hold; on pain of being ſeized and forfeited, together with the package, and the maſter of the veſſel to forfeit 50 l. 23 *G.* 2. *c.* 21. *ſ.* 27. Importation and exportation.

But on information brought againſt ſuch maſter, he may detain the wages of the mariners, till it be determined; and if it ſhall appear, that the ſtarch was put on board by any mariner without the maſter's knowledge, the maſter may apply the wages of ſuch mariner in payment of the forfeiture. 26 *G.* 2. *c.* 32. *ſ.* 8.

And the officers of exciſe (in like manner as the officers of the cuſtoms) may go on board any veſſel, and ſearch for and ſeize all ſtarch forfeited, together with the package; and they may likewiſe ſeize ſuch as before entry and payment of duties, ſhall be found unſhipping or unſhipped. 23 *G.* 2. *c.* 21. *ſ.* 28.

Starch that hath paid the duties may be *exported*; and the duties ſhall be drawn back. 10 *An.* *c.* 26. *ſ.* 25, 26, 27.

But

But no drawback shall be allowed on the exportation of any foreign starch imported. 23 *G.* 2. *c.* 21. *s.* 36.

And the officers of excise or customs may seize any starch or hair powder, with the horses and package, where they have good reason to suspect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices near where the seizure is made; and if the party doth not make it appear that the duty hath been paid, it shall be forfeited, together with the horses and package; and the offender shall likewise forfeit 5 l for every hundred weight. 4 *G.* 2. *c.* 14. *s.* 3.

And by the 23 *G.* 2. *c.* 21. it is enacted, that the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or relanded after drawback; and if the party, at the hearing of the information, shall not make it appear that the duty hath been paid or secured, he shall forfeit 5 l for every 100 pounds weight, and also the goods and package shall be forfeited. *s.* 30.

And if any foreign starch shall be unshipped, with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized, shall forfeit 5 l for every hundred weight. 23 *G.* 2. *c.* 21. *s.* 31.

And if any person shall knowingly harbour or conceal any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 l for every hundred weight, together with the goods and package. 23 *G.* 2. *c.* 21. *s.* 32.

And where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation, at the next market town, on the market day,

day, next after the ſaid 20 days, of the day and place where the juſtices will proceed to trial and condemnation thereof: And the judgment thereon ſhall not be liable to appeal, nor be removed by certiorari. 23 *G.* 2. *c.* 21. *ſ.* 33.

21. No perfumer, peruke maker, barber, or dealer in hair powder, ſhall make, uſe, or offer to ſale, any powder made of or mixed with alabaſter, talke, plaiſter of paris, whiting, lime, or other thing of the like nature (ſweet ſcents only excepted); on pain of forfeiting the ſame, and 50 l. 12 *An. ſt.* 2. *c.* 9. *ſ.* 20. Making of hair powder.

And by the 4 *G.* 2. *c.* 14. If any maker of hair powder, or other ſuch perſon, ſhall mix any powder of alabaſter, plaiſter of paris, talke, chalk, whiting, lime, or any other material (rice firſt made into ſtarch, and ſweet ſcents only excepted) with any ſtarch or powder of ſtarch to be made uſe of for making of hair powder, and ſhall make any hair powder with any the ſaid materials, or any other material except ſtarch or powder of ſtarch, or of rice firſt made into ſtarch, and ſhall uſe, ſell, or offer to ſell any hair powder ſo mixed or made; he ſhall forfeit the ſame, and 20 l. *ſ.* 5.

22. Every maker of hair powder ſhall make entry in writing at the next exciſe office of his place of abode, and of his workhouſe or other place made uſe of for making hair powder; on pain of 20 l. 4 *G.* 2. *c.* 14. *ſ.* 6. Places of making hair powder to be entred.

23. And the officer, in the day time, on his requeſt, may enter places uſed for making hair powder, and the ſhops of perfumers, peruke makers, barbers, and other ſellers or dealers in hair powder, and examine the ſame, and carry away ſamples, paying a reaſonable price for the ſame. 4 *G.* 2. *c.* 14. *ſ.* 7. Officer to enter the ſame and ſurvey.

And if ſuch ſtarch maker or dealer ſhall not on requeſt ſuffer him to enter, and examine, and take ſamples (on offering to pay the common price); he ſhall forfeit 20 l. *id. ſ.* 9.

24. And if any ſtarch maker, or dealer in hair powder, ſhall have in his poſſeſſion, for making, mixing, or counterfeiting hair powder, any alabaſter, plaiſter of paris, talke, chalk, whiting, lime, or other material, beſides ſtarch, or powder of ſtarch, or of rice firſt made into ſtarch; he ſhall forfeit the ſame, and 10 l. 4 *G.* 2. *c.* 14. *ſ.* 8. Perſon having in his poſſeſſion materials for adulterating hair powder.

25. All the ſaid forfeitures ſhall be ſued for, levied and mitigated, as by the laws of exciſe, or in the courts at *Weſtminſter*; and be diſtributed half to the king, and half (and on the 10 *An. c.* 26. half with full coſts) to the proſecutor. Power of the juſtices.

profecutor. 10 *An. c.* 26. *ſ.* 29. 24 *G.* 2. *c.* 40. *ſ.* 33. 19 *G.* 3. *c.* 40. *ſ.* 22.

Proof to lie on the claimer.

26. And where any ſtarch ſhall be ſeized for non-payment of duties, or non-entry, and it ſhall be diſputed whether ſuch payment or entry were made or not; the proof ſhall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *ſ.* 34.

Appeal.

27. And if the party is not ſatisfied with any judgment of the juſtices, on the act of 23 *G.* 2. *c.* 21. above-mentioned, he may appeal to the next quarter ſeſſions (except in the caſe before mentioned, where no perſon ſhall claim the goods ſeized). *ſ.* 36.

Mitigation.

28. And the mitigation on the ſaid act of 23 *G.* 2. ſhall not reduce the penalty to leſs than a fourth part, over and above the charges. *ſ.* 37.

Utenſils liable.

29. And all ſtarch, materials, and utenſils, in cuſtody of the maker, or of any perſon to his uſe, ſhall be liable to all arrears of the duty, and penalties; and ſuch proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 *An. c.* 26. *ſ.* 23.

XVII. Wire.

Importing of wire.

1. No foreign embroidery, or gold or ſilver brocade, thread, lace, fringe, or work made thereof, or of copper, braſs, or other inferior metal, or gold or ſilver wire, or plate ſhall be imported. 15 *G.* 2. *c.* 20. *ſ.* 7. 22 *G.* 2. *c.* 36. *ſ.* 1.

Duty on home wire.

2. For all gilt wire made in *Great Britain* ſhall be paid a duty of 8 d an ounce; for ſilver wire 6 d an ounce, troy weight. 10 *An. c.* 26. *ſ.* 46.

Officers for theſe duties.

3. And the commiſſioners of the treaſury ſhall appoint commiſſioners for theſe duties, who ſhall ſubſtitute inferior officers. 10 *An. c.* 26. *ſ.* 48.

Places of making to be entred.

4. And every perſon who ſhall draw any gold or ſilver into ſuch wire as is commonly called big wire, ſhall firſt give notice in writing at the next office for the ſaid duties, of his name and place of abode, and where he intends to work; on pain of 20 l: and no refiner, wire-drawer, or other perſon, ſhall draw any gold or ſilver into ſuch big wire, at any place other than ſome common bar houſe to be approved by the commiſſioners; on pain of 20 l. 10 *An. c.* 26. *ſ.* 49.

And all gilt and ſilver wire, and bars for making it, which ſhall be found in any private workhouſe, and all private utenſils for barring or drawing it, of which notice ha h

hath not been given, ſhall be forfeited and ſeized, or the value thereof recovered. 10 *An. c.* 26. *ſ.* 59.

5. And the officer ſhall at all times, by day or night, and if in the night in preſence of a conſtable, be permitted on his requeſt to enter the barhouſe, workhouſe, or other place uſed for making of ſuch wire, and take an account of the weight, and thereof make return in writing to the commiſſioners, or to whom they ſhall appoint, leaving a copy thereof, if demanded, with the maker; and if he ſhall refuſe to leave ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. 10 *An. c.* 26. *ſ.* 52. Officer to enter and ſurvey.

6. And if any ſuch maker ſhall obſtruct the officer, in the execution of his office, he ſhall forfeit 20 l. 10 *An. c.* 26. *ſ.* 55. Obſtructing the officer.

7. And the maker ſhall keep juſt weights and ſcales at the place of making the wire, and permit and aſſiſt the officer to weigh; on pain of 10 l. 10 *An. c.* 26. *ſ.* 54. Scales and weights.

And by the 10 *G.* 3. *c.* 44. if he ſhall uſe falſe or inſufficient ſcales or weights, he ſhall forfeit 100 l: but not to be proſecuted both on this and the former act.

8. Every ingot or bar of ſilver, deſigned for gilt wire, ſhall be weighed in the preſence of the exciſe officer, who attends the forge where they are made, before they be covered with gold; and ſhall be weiged in preſence of, and marked by the ſaid officer, after the gold is laid on: and on refuſal to admit the officer, the refiner or maker ſhall forfeit 20 l, half to the king, and half to him that ſhall ſue. 15 *G.* 2. *c.* 20. *ſ.* 8, 9. Ingots to be weighed.

9. If the officer's charge be made, by taking the weight of the gold and ſilver in big wire at the bar houſe, an allowance of one fifth part ſhall be made, in conſideration of the waſte, in reducing the ſame to ſmall wire. 10 *An. c.* 26. *ſ.* 53. Allowance for waſte.

10. No wire drawer ſhall (on pain of 40 l) remove any gilt or ſilver wire, of which no account hath been taken, from the barhouſe or place of making, without giving to the officer 24 hours notice. 10 *An. c.* 26. *ſ.* 56. Removing before ſurveyed.

11. Wire not ſurveyed ſhall be kept ſeparate from that which hath been ſurveyed, for 24 hours after making, unleſs it ſhall be ſooner ſurveyed; on pain of 10 l. 10 *An. c.* 26. *ſ.* 57. Wire unſurveyed to be kept ſeparate.

12. If the maker, or he for whom it is made, ſhall conceal any wire, or bars of ſilver prepared for making it; he ſhall forfeit 20 l. 10 *An. c.* 26. *ſ.* 58. Concealing.

13. The maker ſhall once in every month make entry in writing at the next office, of all the wire by him made, Entry of wire made.

ſetting

ſetting forth the weight, and kinds, and how much was made in each week; on pain of 100l. Which entry ſhall be made on the oath of the maker, or his chief workman, to the beſt of his knowledge and belief, to be adminiſtred by the officer. 10 *An. c.* 26. *ſ.* 50.

Payment of the duty.

14. And the duty ſhall be cleared off in ſix weeks after entry, on pain of double duty. 10 *An. c.* 26. *ſ.* 51.

Exportation.

15. If any perſon ſhall export any gold or ſilver thread, or lace or fringe made of plate wire, ſpun upon ſilk, he ſhall have a drawback after the rate of 5s a pound averdupois, of ſuch ſilver thread, lace, or fringe, and of 6s 8d a pound of ſuch gold thread, lace, or fringe. 10 *An. c.* 26. *ſ.* 62.

Power of the juſtices.

16. All the powers of the exciſe laws ſhall be in force for managing theſe duties: and the penalties and forfeitures (not herein otherwiſe directed) ſhall be ſued for, levied, and mitigated, as by the laws of exciſe, or in the courts at *Weſtminſter*; and be employed, half to the uſe of the king, and half to him that ſhall inform or ſue. 10 *An. c.* 26. *ſ.* 64. 24 *G.* 2. *c.* 40. *ſ.* 33.

Utenſils liable.

17. And all ſuch wire, materials, and utenſils, in cuſtody of any maker, or other to his uſe, ſhall be liable to the duties and penalties; and ſuch proceedings may be had thereupon, as if ſuch debtor or offender were the lawful owner. 10 *An. c.* 26. *ſ.* 60.

For regulations concerning the true making of gilt and ſilver wire (which do not belong to this place) ſee the act of 15 *G.* 2. *c.* 20.

And for prohibiting the ſelling or working up of foreign gold or ſilver lace or thread, ſee the 22 *G.* 2. *c.* 36.

Information againſt an alehouſekeeper for arrears.

Weſtmorland. BE *it remembred, that this* —— *day of* —— *in the* —— *year of the reign of his majeſty king* George *the third that now is, at* —— *in the ſaid county,* A. I. *gentleman, in his proper perſon, as well for his ſaid majeſty, as for himſelf, exhibiteth to us* A. P. *and* J. P. *eſquires, two of his ſaid majeſty's juſtices of the peace for the ſaid county, reſiding near to the place where the forfeiture herein after mentioned was made, a complaint and information, and thereby informeth us, that at ſeveral times between the* —— *day of* —— *and the* —— *day of* —— *both now laſt paſt, at* —— *aforeſaid in the ſaid county, one* A. O. *at a common alehouſe then and there belonging to and uſed by him, did brew the ſeveral and reſpective quantities*

quantities of beer and ale herein after mentioned; that is to ſay, 30 *barrels of ſtrong beer and of ſtrong ale, each above* 6 *s the barrel; and ſixty barrels of ſmall beer not exceeding* 6 *s the barrel; and that the ſaid* A. O. *at and during the reſpective time and times of brewing the ſaid beer and ale, and of every part thereof, was and yet is a common alehouſekeeper; and that there did thereby accrue and become due to his ſaid majeſty from the ſaid* A. O. *for the ſaid beer and ale ſo by him brewed as aforeſaid, certain rates, duties, and ſums of money, amounting in the whole to the ſum of ——— of lawful money of* Great Britain; *which ſaid rates, duties, and ſums of money ſo accrued, or any part thereof, the ſaid* A. O. *hath not paid or cleared off, to or for the uſe of his ſaid majeſty, within a month next after he, according to the ſtatute in that behalf made, did make, or ought to have made his entry or entries of the ſaid beer and ale ſo by him there brewed as aforeſaid, or of any part thereof, or at any time ſince; but the ſame yet remain wholly due and unpaid, contrary to the form of the ſtatute in ſuch caſe made and provided; whereby the ſaid* A. O. *hath forfeited double the value of the ſaid rates, duties, and ſums of money remaining unpaid as aforeſaid; that is to ſay, ——— of like money; and thereupon the ſaid* A. I. *who as well for his ſaid majeſty, as for himſelf exhibiteth this information, prays the judgment of us the ſaid juſtices in the premiſſes, and that he may have one moiety of the ſaid forfeiture, according to the form of the ſtatute in ſuch caſe made; and that the ſaid* A. O. *may be ſummoned to anſwer the premiſſes before us the ſaid juſtices.*

Summons on the foregoing information.

To Mr. A. O. alehouſekeeper.

Weſtmorland. WE J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for ſaid county of —— do hereby give you notice that* A. I. *gentleman, hath exhibited before us an information againſt you for the ſum of —— being double the value of certain duties of exciſe of beer and ale by you brewed, the ſingle duties whereof (as he alledgeth) you ought long ſince to have paid, but have neglected ſo to do: You are therefore hereby required to appear before us at the houſe of —— at the ſign of the —— in —— in the ſaid county, on the —— day —— now next enſuing, at the hour of ——— in the forenoon of the ſaid day, then and there to anſwer to the ſaid information. And if you ſhall neglect ſo to do, we ſhall proceed as if you were perſonally preſent. And we do further authorize and require Mr.* A. E. *officer*

of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under our hands and seals at —— in the said county, the —— day of —— in the —— year of the reign of his said majesty king George *the third.*

Information against a maltster for concealing a quantity of malt.

Westmorland. BE *it remembred, that this —— day of —— in the —— year of the reign of his majesty king* George *the third, at —— in the said county,* A. I. *gentleman, in his proper person, as well for his said majesty as for himself, exhibiteth to us* J. P. *and* K. P. *esquires, two of his said majesty's justices of the peace for the said county, residing near to the place where the offence herein after mentioned was committed, as is alledged, a complaint or information, and thereby informeth us, that* A. O. *of —— in the said county, during three months now last past and longer, having been and continued to be, and yet being a maltster and maker of malt, and not having compounded for the duties of the malt herein after mentioned, be the said* A. O. *within three months now last past, at —— in the said county did fraudulently hide, conceal, and convey away malt by him made, that is to say,* 12 *bushels of malt by him so made as aforesaid, from the sight and view of one* A. E. *being at the said time of the said hiding and concealing thereof, and long before, and ever since, the gager appointed to take an account of the same, and then and there endeavouring to take such account; which hiding, concealing, and conveying away as aforesaid, are contrary to the form of the statute in such case made and provided: Whereby he the said* A. O. *for every bushel of the said malt so hid and concealed, hath forfeited* 10 *s of lawful money of* Great Britain, *amounting in the whole to* 6 *l of like money. And thereupon the said* A. I. *who as well for his said majesty as for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said* A. O. *may be summoned to answer the said premisses, before us the said justices.*

Summons on the foregoing information.

Westmorland. } To Mr. A. O. maltster.

WE J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the county aforesaid, do hereby give*

give you notice, that A. I. *gentleman, hath exhibited before us an information againſt you for the penalty of* 6*l* *by you forfeited for hiding, concealing, and conveying away* 12 *buſhels of malt, from the ſight and view of the gager appointed to take an account of the ſame, againſt the form of the ſtatute in ſuch caſe made: You are therefore hereby required to appear before us, at the houſe of* —— *at the ſign of* —— *in* ——— *in the ſaid county, on the* ——— *day of* ——— *now next enſuing, at the hour of* —— *in the forenoon of the ſame day, then and there to anſwer to the ſaid information. And if you neglect ſo to do, we ſhall proceed as if you were perſonally preſent. And we do further authorize and require Mr.* A. E. *officer of exciſe, or any other officer of exciſe, to ſerve this our ſummons, and to attend us at the time and place laſt mentioned, then and there to make a return thereof to us the ſaid juſtices. Given under our hands and ſeals at* —— *in the ſaid county, this* —— *day of* —— *in the* —— *year of the reign of his ſaid majeſty king* George *the third.*

Summons to give evidence.

Weſtmorland. { To A. W. *of* —— yeoman.

WHEREAS *we whoſe hands and ſeals are hereunto ſet, being two of his majeſty's juſtices of the peace in and for the ſaid county, have received information, that* A. O. *of* —— *in the ſaid county, alehouſekeeper, did on the* ——— *day of* ——— *now laſt paſt, brew and ſell ale and beer, and hath not made entry thereof, according to the ſtatute in that behalf made; and that you the ſaid* A. W. *are a material witneſs to be examined concerning the ſame: Theſe are therefore to require you to appear before us at the houſe of* ——— *at the ſign of the* —— *in* —— *in the ſaid county, on the* —— *day of* —— *now next enſuing, at the hour of* —— *in the forenoon of the ſame day, to teſtify your knowledge concerning the premiſſes. Herein fail you not. Given under our hands and ſeals at* ——— *in the ſaid county, the* —— *day of* —— *in the* ——— *year of the reign of his ſaid majeſty king* George *the third.*

Minutes of the judgment againſt the defendant.

AT *the time and place appointed by our ſummons on the information within written; that is to ſay, this* —— *day of* —— *in the* — *year of the reign of our ſovereign lord king* George *the third, at* ——— *in the county of* ——— *within*

mentioned; *the within named defendant* A. O. *appeareth, and pleadeth that he is Not Guilty of the offence within mentioned; but upon a due and full hearing of the proofs made in and concerning the premisses, we do convict him thereof*; [Or, *sufficient proof being made before us, that the within named defendant* A. O. *hath had due notice of the within written information, and that he was duly summoned to appear before us here this day; and he, in contempt of the said summons, neglecting now to appear and making default therein; and the fact and offence in the within written information being now fully proved before us, we do convict him thereof:*] *It is therefore now here considered and adjudged by us the said justices, that the said defendant hath forfeited the within mentioned sum of* 50 *l (which we mitigate and lessen to the sum of* 7 *l) to be distributed as the law directs. Given under our hands and seals, at*——*aforesaid, this*——*day of*——*in the*——*year of the reign of our said sovereign lord king* George *the third.*

Warrant of distress.

Westmorland. { To A. E. and B. E. officers of excise, and to either of them, and to such other person and persons as they or either of them shall take to his or their assistance.

WE *whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of*—— *do in his said majesty's name, authorize and command you and every of you, that upon the brewing vessels and utensils for brewing used by* A. O. *of*——*in the said county, innkeeper, in the brewhouse and place where he usually brews, at*—— *aforesaid, and upon the goods and chattels of the said* A. O. *you or any of you do levy the sum of* 20 *l of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* 50 *l of like money recovered against him by* A. I. *gentleman, who prosecuted as well for our sovereign lord the king, as for himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he the said* A. O. *is convicted before us: And for the levying thereof you are to seize, take and carry away the said brewing vessels and utensils for brewing, and also the goods and chattels aforesaid; and if in* [*eight*] *days next after such seizure, the said sum of* 20 *l together with the reasonable charges of taking and keeping the said vessels and utensils, goods and chattels, shall not be paid, then, and in such case* (*after the expiration of the said*——*days*) *you are to make sale thereof or so much thereof as shall be sufficient for the purposes herein specified; which said sum of* 20 *l, when*

when ſo levied as aforeſaid, you are forthwith to pay to the collector of exciſe for the collection called———collection, for the time being; to be by him diſtributed and anſwered, according to the ſtatute in ſuch caſe made and provided: and after levying thereof, the overplus which ſhall remain of the ſaid brewing veſſels and utenſils for brewing, and of the ſaid goods and chattels, and of the money ariſing by ſuch ſale, you are to return unto the ſaid A. O. *upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid veſſels and utenſils, goods and chattels, being out of the ſaid overplus money firſt deducted. And all conſtables and other peace officers of the ſaid county are hereby required to be aiding and aſſiſting to you in the due execution hereof. But in caſe there cannot be found ſufficient to raiſe the ſum laſt mentioned, then and in ſuch caſe, you are by a return to this our warrant, forthwith to certify the ſame, to us the ſaid juſtices. Given under our hands and ſeals at——in the ſaid county, this———day of——in the——year of his ſaid majeſty's reign, and in the year of our Lord———*

Return of the want of diſtreſs.

Weſtmorland. I A. E. *one of the officers of his majeſty's duties of exciſe, do hereby certify to* J. P. *and* K. P. *eſquires, two of his ſaid majeſty's juſtices of the peace for the ſaid county, that by virtue of a warrant from the ſaid juſtices to levy the ſum of* 20 *l upon the brewing veſſels and utenſils for brewing uſed by* A. O. *in his uſual place of brewing, and upon his goods and chattels, I have made diligent ſearch for ſuch veſſels, utenſils, goods, and chattels; and that I can find none ſuch; and that I do not know, nor can find, that the ſaid* A. O. *hath any goods or chattels whatſoever. Witneſs my hand hereunto ſet, at——in the ſaid county, this ——day of——in the year of our Lord——*

Warrant of commitment.

Weſtmorland. { To A. E. and B. E. officers of exciſe, and to either of them, and to ſuch perſon or perſons as they or either of them ſhall take to their aſſiſtance: And to the gaoler or keeper of ſuch priſon to whom theſe preſents ſhall come.

WHEREAS *we whoſe hands and ſeals are hereunto ſet, two of his majeſty's juſtices of the peace for the ſaid county of———by our warrant under our hands and ſeals, bearing date the———day of———now inſtant, did re-*

quire and command you the said A. E. *and* B. E. *or either of you, to levy the sum of* 20 *l therein mentioned on the brewing vessels and utensils for brewing, used by* A. O. *of———in the said county, innkeeper, and upon the goods and chattels of the said* A. O. *And whereas you the said* A. E. *and* B. E. *by a return and certificate under your hands, bearing date the—— day of——now instant, have certified to us, that having made diligent search for such brewing vessels and utensils for brewing, and for such goods and chattels, you cannot find any whereon to levy the said* 20 *l or any part thereof, and that no such vessels, utensils, goods or chattels can be found: We therefore the said justices do in his majesty's name hereby authorize, require and command you, every, or any of you, to take and arrest the body of him the said* A. O. *and forthwith to carry him to the goal or prison of and for the county or place where you shall so take and arrest him; and him, together with a duplicate of this our warrant, there to deliver into the custody of the gaoler or keeper of the said gaol or prison of and for the said county or place, there to remain in safe custody until he shall satisfy and pay the said sum of* 20 *l of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* 50 *l of like money, by us the said justices adjudged against him, upon an information exhibited against him before us by* A. I. *gentleman, as well on the behalf of his said majesty, as of himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables, and other his majesty's officers, are hereby authorized and required, to be aiding and assisting to you in the due execution hereof. And the goalor and gaolers, keeper and keepers of such prison or goal to which you shall so carry the body of the said* A. O. *is and are hereby authorized and required, to receive into his or their custody the body of the said* A. O. *and the same to keep in safe custody until he shall satisfy and pay the said sum of* 20 *l before mentioned. And for your, any, or either of your doing as is before respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given under our hands and seals at——in the said county, this——day of——in the——year of the reign of his said majesty, and in the year of our Lord———*

More precedents it is not necessary to add, since the officers of excise are generally well furnished with printed forms drawn by good advice.

Note; These statutes abovementioned, relating to this title are but temporary, and have their continuance as follows,

8 *G.* *c.* 18. Spirituous liquors. By the 21 *G.* 3. *c.* 29. to *Sep.* 29, 1788, and from thence to the end of the then next ſeſſion of parliament.

5 *G.* 2. *c.* 24. Coffee. By the 21 *G.* 3. *c.* 29. to *June* 24, 1788, and from thence to the end of the then next ſeſſion of parliament.

15 *G.* 2. *c.* 25. Rum. By the 19 *G.* 3. *c.* 22. to *Sep.* 29, 1785, *&c.*

19 *G.* 2. *c.* 34. Outlawed ſmugglers. By the 18 *G.* 3. *c.* 45. to *Sep.* 29, 1785, *&c.*

Execution.

1. WHERE a perſon attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution ſhould not be awarded againſt him; if he deny that he is the ſame perſon, it ſhall immediately be tried by a jury returned for that purpoſe. 2 *Haw.* 463.

2. The court may command execution to be done, without any writ. 2 *Haw.* 463.

3. In fixed and ſtated judgments, the law makes no diſtinction between a peer and a commoner, or between a common and ordinary caſe, and one attended with extraordinary circumſtances; for which reaſon it was adjudged in *Felton*'s caſe, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the ſentence that his body ſhould be hanged in chains, but that the body after execution being at the king's diſpoſal, might be hanged in chains, or otherwiſe ordered as the king ſhould think fit. 2 *Haw.* 443.

4. But the king may pardon part of the judgment; as where the judgement is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading whereby the judgment is not altered, but part of it remitted. 2 *H. H.* 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, be ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw.* 463.

Exigent. See **Proceſs.**

Extortion.

IT is ſaid, that extortion, in a large ſenſe, ſignifies any oppreſſion under colour of right; but that, in a ſtrict ſenſe, it ſignifies the taking of money by any officer, by colour of his office, either where none at all is due, or not ſo much is due, or where it is not yet due. 1 *Haw.* 170.

And by the ſtatute of the 3 *Ed.* 1. *c.* 26. (which is only in affirmance of the common law) *No ſheriff, nor other the king's officer, ſhall take any reward to do his office, but ſhall be paid of that which they take of the king; and he that ſo doth, ſhall yield twice as much, and ſhall be puniſhed at the king's pleaſure.*

No ſheriff nor other the king's officer] Under theſe words, the law beginning with the *ſheriffs*, are underſtood eſcheators, coroners, bailiffs, goalers, and other inferior officers of the king, whoſe offices were inſtituted before the making of this act, which do any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, or for the king's ſervice. 2 *Inſt.* 209.

Alſo the juſtices of the peace, whoſe office was inſtituted after this act, are bound by their oath of office, to take nothing for their office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.

And generally, no publick officer ſhall take any other fees or rewards, for doing any thing relating to his office, than ſome ſtatute in force gives him, or elſe as hath been anciently and accuſtomably taken; and if he do otherwiſe, he is guilty of extortion. *Dalt. c.* 41.

Shall take any reward] Therefore by this ſtatute, they can at this day take no more for doing their office, than hath been ſince allowed to them by authority of parliament. 2 *Inſt.* 210.

And all preſcriptions which have been contrary to this ſtatute, and to the common law in affirmance of which it is made, have been always holden to be void. 1 *Haw.* 170.

And it has been reſolved, that a promiſe to pay them money for the doing of a thing, which the law will not ſuffer them to take any thing for, is merely void. 1 *Haw.* 171.

To do his office] It is not ſaid, that he ſhall take no reward generally, but no reward to do his office: Thus the fee of 20 *d* called bar fee, time out of mind taken by the ſheriff of every priſoner that is acquitted, is not againſt

this

this ſtatute; for it is not taken for doing his office. 2 *Inſt.* 210.

But there ſeems to be no neceſſity for this diſtinction, for it cannot be intended to be the meaning of the ſtatute to reſtrain the courts of juſtice, in whoſe integrity the law always repoſes the higheſt confidence, from allowing reaſonable fees for the labour and attendance of their officers; for the chief danger of oppreſſion is from officers being left at their liberty to ſet their own rates on their labour, and make their own demands; but there cannot be ſo much fear of theſe abuſes, while they are reſtrained to known and ſtated fees, ſettled by the diſcretion of the courts, which will not ſuffer them to be exceeded, without a proper reſentment. 1 *Haw.* 171.

But in the eccleſiaſtical court, a perſon was libelled againſt for fees, and upon motion a prohibition was granted, for that it was holden that no court had a power to eſtabliſh fees: the judge of a court may think them reaſonable, but that is not binding; but if on a *quantum meruit* a jury think them reaſonable, then they become eſtabliſhed fees. 1 *Salk.* 333.

The fees in ſeſſions, for traverſing, trying, or diſcharging indictments, diſcharging recognizances, and the like, do vary according to the different cuſtoms in different places. *Dalt. c.* 41.

Shall yield twice as much] At the common law this offence is ſeverely puniſhable at the king's ſuit, by fine and impriſonment, and alſo by a removal from the office in the execution whereof it was committed. And this ſtatute doth add a greater penalty than the common law did give; for hereby the plantiff ſhall recover his double damages. 2 *Inſt.* 210. 1 *Haw.* 171.

And by the 31 *El. c.* 5. Actions for extortion may be laid in any county.

At the king's pleaſure] That is, by the king's juſtices, before whom the cauſe depends. 2 *Inſt.* 210.

Indictment for extortion in a goaler.

THE *jurors for our lord the king, upon their oath preſent, that* A. O. *late of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* —— *was taken upon ſuſpicion of having committed a certain felony, by* ——— *conſtable of* ——— *in the ſaid county, by virtue of a warrant directed to the ſaid* —— *under the hand and ſeal of Sir* William Dalſton, *knight, then*

and yet one of the juſtices of our ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and was, on the ſame day in the year aforeſaid, committed by him the ſaid Sir William Dalſton, *to* A. G. *keeper of the goal of our ſaid ſovereign lord the king at——in the ſaid county, under the cuſtody of him the ſaid* A. G. *to be ſafely kept, upon ſuſpicion of the felony aforeſaid, and the ſaid* A. O. *was detained in that priſon under the cuſtody of the ſaid* A. G. *from the time that he was committed to the ſaid priſon for one month from thence next enſuing, upon ſuſpicion of the ſaid felony; nevertheleſs the ſaid* A. G. *in no wiſe regarding the ſtatute in that caſe made, and the penalty therein contained, did on the —— day of —— at —— aforeſaid, in the ſaid county, demand and receive ——pounds of lawful money of* Great Britain *of and from the ſaid* A. O. *for eaſe and favour in the ſaid gaol for the ſaid time, in contempt of our ſaid ſovereign lord the king, and againſt the form of the ſtatute aforeſaid, and againſt the peace of our ſaid ſovereign lord the king, his crown and dignity.*

Indictment for extortion of a bailiff.

THE *jurors for our lord the king upon their oath preſent, that* A. B. *late of —— in the ſaid county, yeoman, being bailiff of the hundred of —— in the ſaid county, on the —— day of —— in the —— year of the reign of —— at —— in the ſaid county, by pretext and colour of his ſaid office, did unjuſtly and by extortion take and extort* 5 s *of one* A. I. *of —— in the ſaid county, yeoman, one of the freeholders qualified to ſerve upon juries in the ſaid county, to excuſe the ſaid* A. I. *from attending or appearing at the aſſizes that were then next to be holden in and for the ſaid county, when in fact the ſaid* A. I. *was not returned by the ſheriff of the ſaid county in any panel of jurors, and alſo when indeed no ſuch ſum of money was due to the ſaid* A. B. *for his fee for excuſing the attendance or appearance of the ſaid* A. I. *at the aſſizes aforeſaid, to the evil example of other offenders, to the great damage of him the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Falſe tokens. See Cheat

Faſt days.

BY the 2 & 3 *Ed.* 6. *c.* 19. for the encouragement of the fiſheries, and the increaſe of cattle; and the

5 *El.*

5 *El. c.* 5. intitled, an act touching political conſtitutions for the maintenance of the navy; and by the 35 *El. c.* 7. it is enacted as follows:

No perſon ſhall eat any manner of fleſh on any *Friday* or *Saturday*, or the embring days, or in *Lent*, nor on any other day commonly reputed a fiſh day; on pain of forfeiting 20 s, or being impriſoned one month.

And every perſon in whoſe houſe any fleſh ſhall be eaten on fiſh days, and not diſcloſing the ſame to a public officer having authority to puniſh the ſame; ſhall forfeit 13 s 4 d.

Which ſaid forfeitures ſhall be, one third to the king, one third to the informer, and one third to the common uſe of the pariſh where the offence ſhall be committed; to be levied by the churchwardens after conviction.

Proſecution to be at the aſſizes or ſeſſions, in three months after the offence committed.

But nothing herein ſhall extend to any perſon having the king's licence; or being in great age, and weakneſs thereby, or ſick, or notably hurt; or a woman with child, or lying in child-bed, for eating of ſuch one kind of fleſh as ſhe ſhall have great luſt unto; or in priſon; nor to the king's lieutenant, deputy, or captain in his armies, but the ſame may eat, or licenſe his ſoldiers to eat fleſh for lack of other victual; nor to perſons licenſed by the archbiſhop of *Canterbury*.

And ſuch licences ſhall be on condition, that the perſon licenſed ſhall within ſix days after *Candlemas*, pay to the poor box where he dwells, if he be a lord 26 s 8 d, a knight 13 s 4 d, and all others 6 s 8 d.

But ſick perſons may be licenſed by the biſhop of the dioceſe, or by the parſon, vicar, or curate of the pariſh, or (if there be none, or he be wilful) of the next pariſh; and if the ſickneſs continues above eight days, the licence, ſhall be regiſtred in the church book, with the knowledge of a churchwarden; and the curate ſhall have 4 d for entry; and the ſame to endure no longer than ſuch ſickneſs.

And no licence ſhall extend to the eating any beef at any time of the year, nor veal from *Sep.* 29, to *May* 1, in any year.

And perſons licenſed (except for ſickneſs) ſhall for every diſh of fleſh at their table, have one diſh of ſea fiſh.

Fees. See Extortion.

Felo de ſe. See Homicide.

Felony,

Felony, Miſpriſion of Felony, and Theftbote.

I. *Felony.*

FELONY is ſuppoſed by ſome to come from the Saxon *fell*, which ſignifieth fierce or cruel; of which the verb *fell* ſignifieth to throw down or demoliſh; and the ſubſtantive of that name is uſed to ſignify a mountain rough and uncultivated. But the ſame word, with a little variation, runneth through moſt of the *European* languages, and ſignifieth more generally an offence at large; and the Saxon word *fællan* ſignifieth to offend, and *fællniſſe* an offence or *failure*; and altho' *felony*, as it is now become a technical term, ſignifieth in a more reſtrained ſenſe an offence of an high nature, yet it is not limited to *capital* offences only, but ſtill retaineth ſomewhat of this larger acceptation; for petit larceny is felony, altho' it is not capital.

According to Sir *Henry Spelman*'s obſervation, it ſignifies ſuch an offence, for which, during the feudal inſtitution, a man ſhould loſe or forfeit his eſtate; which he derives of two northern words, *fee*, which ſignifies the fief, feud, beneficiary eſtate, and *lon*, which ſignifies price or value.

It would ſwell this title near to the bigneſs of half the book, to ſet down every thing which may be comprehended under this word *felony*: therefore it is neceſſary to refer the conſideration of the ſeveral particular kinds of felonies to their reſpective titles; as for inſtance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and eſpecially the law relating to ſtolen goods of all kinds belongs to title *Larceny*.

The method of bringing a felon to juſtice from the firſt commiſſion of the felony, to his condemnation and execution, is treated of under the ſeveral titles of *Hue and cry*, *Arreſt*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Confeſſion*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Execution*. And the courſe and whole procedure of trying an offender, is treated of under the title *Seſſions*.

And the method of confining offenders to hard labour in penitentiary houſes, or in veſſels upon navigable rivers, inſtead

inſtead of tranſportation, is treated of under the title *Tranſportation.*

So that there is nothing left for this place, but to take notice of one circumſtance which is common to all felonies in general, and that is, concerning the charges of commitment, proſecution, conviction, or diſcharge.

1. By the 3 *J. c.* 10. The felon ſhall pay the charges of his carrying to goal, if able; to be levied by diſtreſs by warrant of one juſtice.

And by the 27 *G.* 2. *c.* 3. if he is not able, the ſame ſhall be paid, by order of ſuch juſtice, by the treaſurer out of the county rate; and in *Middleſex* by the overſeers of the poor where the party was apprehended.

2. By the 25 *G.* 2. *c.* 36. the court, before whom any perſon hath been tried and *convicted* of any grand or petit larceny, or other felony, may at the prayer of the *proſecutor*, and on conſideration of his circumſtances, order the treaſurer of the county in which the offence ſhall have been committed, to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble; and the clerk of aſſize, or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on paying 1 s; and the treaſurer ſhall pay the ſame on ſight, and be allowed the ſame in his accounts

And by the 18 *G.* 3. *c.* 19. The court before whom any perſon hath been tried and *convicted* of any grand or petit larceny or other felony; or before whom any perſon hath been tried and *acquitted* of any grand or petit larceny or other felony, in caſe it ſhall appear to the ſaid court that there was a reaſonable ground of proſecution, and that the proſecutor had *bona fide* proſecuted;—— may order the treaſurer to pay to ſuch proſecutor ſuch ſum as they ſhall think reaſonable not exceeding the expences he was *bona fide* put unto, making alſo, if he ſhall appear to be in poor circumſtances, a reaſonable allowance for his trouble and loſs of time; which order the clerk of aſſize, or clerk of the peace reſpectively, ſhall forthwith make out and deliver to him, on being paid for the ſame 1 s and no more; and the treaſurer upon ſight of the order ſhall forthwith pay the ſame. *ſ.* 7.

And the juſtices in ſeſſions may lay down or alter, from time to time, ſuch rules and regulations concerning any coſts or charges thereafter to be allowed to any perſon by virtue of this act: which rules and regulations, having received the approbation and ſignature of one or more of the judges of aſſize, ſhall be binding, and not otherwiſe, on all perſons whatſoever. *ſ.* 9.

3. By

3. By the 27 *G.* 2. *c.* 3. when any poor perſon ſhall appear on recognizance to give *evidence*, the court may order the treaſurer to pay him ſuch ſum as they ſhall think reaſonable, for his time, trouble, and expences (whether the perſon hath been convicted or not); which order the proper officer ſhall make out for the fee of 6 d. Except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

And by the 18 *G.* 3. *c.* 19. The court, where any perſon ſhall appear on *recognizance* or *ſubpæna* to give evidence as to any grand or petit larceny or other felony, whether any bill of indictment be preferred or not, may order the treaſurer to pay to him ſuch ſum as they ſhall think reaſonable, not exceeding the expences he was *bona fide* put unto, making alſo, if he ſhall appear to be in poor circumſtances, a reaſonable allowance for his trouble and loſs of time; which order the clerk of aſſize or clerk of the peace reſpectively ſhall forthwith make out and deliver to him, on being paid for the ſame 6 d and no more; and the treaſurer upon ſight of the order ſhall forthwith pay the ſame, (with a like power for the juſtices in ſeſſions to make regulations from time to time, with the approbation of a judge of aſſize, concerning the coſts and charges of witneſſes, in like manner as of proſecutors.) *ſ.* 8, 9.

4. By the 14 *G.* 3. *c.* 20. Every priſoner, charged with any felony or other crime, or as acceſſary thereto, before any court having criminal juriſdiction, againſt whom no bill of indictment ſhall be found, or who ſhall on trial be acquitted, or who ſhall be diſcharged by proclamation for want of proſecution, ſhall be immediately ſet at large in open court, without paying any fee to the ſheriff or gaoler; and ſuch fees as had been uſually paid in reſpect of ſuch diſcharge, not exceeding 13 s 4 d for each priſoner, ſhall, on certificate of a judge or juſtice before whom ſuch priſoner ſhall have been diſcharged, be paid out of the general county rate.

II. Miſpriſion of Felony.

Miſpriſion of felony (from the *French* word *meſpris*, a neglect or contempt, 3 *Inſt.* 36.) is the concealing of a felony which a man knows, but never conſented to: for if he conſented, he is either a principal or acceſſary in the felony, and conſequently guilty of miſpriſion of felony and more. 1 *H. H.* 374.

For

For it is ſaid, that every felony includes miſpriſion of felony, and may be proceeded againſt as a miſpriſion only, if the king pleaſes. 1 *Haw.* 125.

The puniſhment of miſpriſion of felony in a common perſon, is fine and impriſonment; in an officer, as ſheriff or bailiff of liberties, impriſonment for a year, and ranſom at the king's pleaſure, by the ſtatute of 3 *Ed.* 1. *c.* 9.

If any perſon will ſave himſelf from the crime of miſpriſion, he muſt diſcover the offence to a magiſtrate with all ſpeed that he can. 3 *Inſt.* 140.

Miſpriſion, in a larger ſenſe, is uſed to ſignify every conſiderable miſdemeanor, which hath not a certain name given to it in the law.

III. Theftbote.

Theftbote (from the *Saxon* words *theft*, and *bote*, boot or amends) is, where one not only knows of a felony but takes his goods again, or other amends not to proſecute. 1 *Haw.* 125.

But the bare taking of one's own goods again, which have been ſtolen, is no offence, unleſs ſome favour be ſhewn to the thief. 1 *Haw.* 125.

This offence is very nearly allied to felony, and is ſaid to have been anciently puniſhed as ſuch; but at this day it is puniſhable only with ranſom and impriſonment, unleſs it were accompanied with ſome degree of maintenance given to the felon, which makes the party an acceſſary after the fact. 1 *Haw.* 125.

Information againſt a perſon for felony.

Weſtmorland. THE *information and complaint of* A. I. *of* ——— *in the county of* ——— *yeoman, made on oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, the* —— *day of* —— *in the year* —— *that yeſterday in the night or early in the morning of this day, divers goods of him the ſaid* A. I. *to wit,* —— *have felonioufly been ſtolen, taken, and carried away from the houſe of him the ſaid* A. I. *at* —— *aforeſaid in the county aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that* A. O. *late of* —— *yeoman, felonioufly did ſteal, take, and carry away the ſame* [Or otherwiſe as the caſe ſhall be:] *And thereupon he the ſaid* A. I. *prayeth that juſtice may be done in the premiſſes.*

Before me
J. P.

A. I.

Warrant

Warrant for felony.

Weſtmorland. { To the conſtable of ———

FORASMUCH *as* A. I. *of* ——— *in the county of* ——— *yeoman, hath this day made information and complaint upon oath, before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, that this preſent day divers goods of him the ſaid* A. I. *to wit,* ——— *have feloniouſly been ſtolen, taken, and carried away from the houſe of him the ſaid* A. I. *at* ——— *aforeſaid, in the county aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect that* A. O. *late of* ——— *yeoman, feloniouſly did ſteal, take and carry away the ſame* [Or otherwiſe as the caſe ſhall be:] *Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and to bring him before me to anſwer unto the ſaid information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and ſeal the* ——— *day of* ——— *in the year*———

The form of a ſearch warrant for ſtolen goods is inſerted under the title *Search Warrant.*

The forms of indictments for ſtolen goods for various kinds, are inſerted under the title **Larceny.**

Feme covert. See **Wife.**
Fern: Burning of it in foreſts. See **Burning.**
Fire. See **Burning**

Fireworks.

Fireworks a nuſance.

1. IT ſhall not be lawful for any perſon (of what age, ſex, degree, or quality ſoever (to make or cauſe to be made, or to ſell or expoſe to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds or other implements for making the ſame; or to permit the ſame to be caſt or fired from his houſe or other place thereto belonging, into any publick ſtreet or road; or to throw or fire, or be aiding in throwing or firing the ſame, in any publick ſtreet, houſe, ſhop, river, or highway; and every ſuch offence ſhall be adjudged a common nuſance. 9 & 10 *W. c.* 7. *ſ.* 1.

Making or ſelling rockets.

2. And if any perſon ſhall make or cauſe to be made, or give, ſell, or offer to ſale, any ſquibs, rockets, ſerpents,

pents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; he ſhall on conviction before one juſtice, or chief magiſtrate, by confeſſion, or oath of two witneſſes, forfeit 5 l, half to the poor, and half to the proſecutor; to be levied by diſtreſs, by warrant of ſuch juſtice or chief magiſtrate. 9 & 10 *W. c.* 7. *ſ.* 2.

3. And if any perſon ſhall permit any the ſame to be caſt or fired, from his houſe or other place thereto belonging, into any publick ſtreet or road, or any other houſe or place; he ſhall forfeit 20 s in like manner. 9 & 10 *W. c.* 7. *ſ.* 2. Suffering rockets to be fired.

4. And if any perſon ſhall caſt or fire, or be aiding in caſting or firing any the ſame, into any publick ſtreet, houſe, ſhop, river or highway; he ſhall forfeit 20 s in like manner; and if he ſhall not immediately on conviction pay to the juſtice the ſaid forfeiture for the uſes aforeſaid, he ſhall commit him to the houſe of correction to be kept to hard labour for any time not exceeding one month, unleſs he ſhall ſooner pay the forfeiture. 9 & 10 *W. c.* 7 *ſ.* 3. Firing rockets.

E. 13 *G.* 3. *Scott* an infant by his next friend, againſt *Shepherd* an infant by guardian. An action was brought, of treſpaſs and aſſault, againſt the defendant, for throwing, caſting, and toſſing a lighted ſquib, at and againſt the plaintiff, and ſtriking him therewith on the face, and ſo burning one of his eyes, that he loſt the ſight of it. On Not Guilty pleaded, the cauſe came on to be tried before Mr. juſtice *Nares* at the aſſizes at *Bridgewater*; when the jury found a verdict for the plaintiff, with 100 l damages, ſubject to the opinion of the court on the following caſe. On the evening of the fair day at *Milborne Port*, the defendant threw a lighted ſquib from the ſtreet into the market houſe, which is a covered building, ſupported by arches, and incloſed at one end, but open at the other and at both ſides, where a large concourſe of people was aſſembled; which lighted ſquib, ſo thrown by the defendant, fell upon the ſtanding of one *Yates*, who ſold gingerbread and other like goods: That one *Willis* inſtantly, and to prevent injury to himſelf and the ſaid wares of the ſaid *Yates*, took up the ſaid lighted ſquib from off the ſaid ſtanding, and then threw it acroſs the ſaid market houſe; when it fell upon another ſtanding there of one *Ryall*, who ſold the ſame ſort of wares; who inſtantly, and to ſave his own goods from being injured, took up the ſaid lighted ſquib from off the ſaid ſtanding, and then threw it to another part of the ſaid

market houſe, and, in ſo throwing it, ſtruck the plaintiff then in the ſaid market houſe in the face therewith, and the combuſtible matter then burſting put out one of the plaintiff's eyes. The queſtion was, Whether this action is maintainable. The caſe was argued two ſeveral terms, and the court being divided in their judgments, delivered their opinions *ſeriatim*.—*Nares* juſtice was of opinion, that treſpaſs would well lie in this caſe: That the natural and probable conſequence of the act done by the defendant was injury to ſomebody, and therefore the act was illegal at common law; and the throwing of ſquibs has by the ſtatute been ſince made a nuſance; being therefore unlawful, the defendant was liable to anſwer for the conſequences, be the injury mediate or immediate: That the defendant was the perſon who gave the miſchievous faculty to the ſquib, and that miſchievous faculty remained in it till the exploſion: That no new power of doing miſchief was communicated to it by *Willis* or *Ryall*. It is like the caſe of a mad ox turned looſe in a crowd: The perſon who turns him looſe is anſwerable in treſpaſs for whatever miſchief he may do. The intermediate acts of *Willis* and *Ryall* will not purge the original wrong in the defendant; but he who does the firſt wrong is anſwerable for all the conſequential damages.—*Blackſtone* juſtice was of opinion, that an action of treſpaſs did not lie for *Scott* againſt *Shepherd*. He took the ſettled diſtinction to be, that where the injury is immediate, an action of treſpaſs will lie; but where it is only conſequential, it muſt be an action on the caſe. Here the original act was as againſt *Yates* as a treſpaſs; not as againſt *Ryall* or *Scott*. The wrongful act was compleat, when the ſquib lay at reſt upon *Yates*'s ſtall. He, or any by-ſtander, had, I allow, a right to protect themſelves by removing the ſquib, but ſhould have taken care to do it in ſuch a manner as not to indamage others. But *Shepherd*, I think, is not anſwerable in an action of treſpaſs and aſſault for the miſchief done by the ſquib in the new motion impreſſed upon it, and the new direction given by it, by either *Willis* or *Ryall*: who both were free agents, and acted upon their own judgment. As I therefore think that no immediate injury paſſed from the defendant to the plaintiff, and without ſuch immediate injury, no action of treſpaſs can be maintained, I am of opinion, that in this action judgment ought to be for the defendant.—*Gould* juſtice was of opinion that this action was well maintainable. I think the defendant may be conſidered in the ſame view, as if he himſelf had perſon-

ally thrown the ſquib in the plaintiff's face. The terror impreſſed upon *Willis* and *Ryall* excited ſelf defence, and deprived them of the power of recollection. What they did was therefore the inevitable conſequence of the defendant's unlawful act. Had the ſquib been thrown into a coach full of company, the perſon throwing it out again would not have been anſwerable for the conſequences. What *Willis* and *Ryall* did, was by neceſſity, and the defendant impoſed that neceſſity upon them.—*De Grey* chief juſtice: The true queſtion is, Whether the injury received by the plaintiff ariſes from the force of the original act of the defendant, or from a new force by a third perſon. And I am of opinion, that the injury is the direct and immediate act of the defendant. The throwing of the ſquib was an act unlawful, and tending to affright the by-ſtanders. So far, miſchief was originally intended; not any particular miſchief, but miſchief indiſcriminate and wanton. Whatever miſchief therefore follows, he is author of it. I look upon all that was done ſubſequent to the original throwing as a continuation of the firſt force and firſt act, which will continue till the ſquib was ſpent by burſting. And I think, that any innocent perſon, removing the danger from himſelf to another, is juſtifiable; the blame lights upon the firſt thrower. The new direction, and new force, flow out of the firſt force, and are not a new treſpaſs.——And the plaintiff had judgment. *Black. Rep.* 892.

Fiſh and Fiſhing. See **Game.**
Fiſh Salted. See **Exciſe.**
Flight. See **Forfeiture.**

Forcible entry and detainer.

FORCE, in the common law, is moſt commonly taken in ill part, for unlawful violence. 1 *Inſt.* 161. It ſeems that at the common law, a man diſſeiſed of any lands or tenements, if he could not prevail by fair means, might lawfully regain the poſſeſſion thereof by force, unleſs he were put to a neceſſity of bringing his action, by having neglected to re-enter in due time: And it ſeems certain, that even at this day, he who is wrongfully diſpoſſeſſed of his *goods*, may juſtify the retaking of

them by force from the wrong doer, if he refuſe to redeliver them; for the violence which happens through the reſiſtance of the wrongful poſſeſſor, being originally owing to his own fault, gives him no juſt cauſe of complaint, inaſmuch as he might have prevented it by doing as he ought. 1 *Haw.* 140.

But this indulgence of the common law, in ſuffering perſons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and alſo by force to retain their wrongful poſſeſſions, it was thought neceſſary by many ſevere laws to reſtrain all perſons from the uſe of ſuch violent methods of doing themſelves juſtice. 1 *Haw.* 141.

However even at this day, in an *action* of forcible entry grounded on thoſe laws, if the defendant make himſelf a title which is found for him, he ſhall be diſmiſſed without any inquiry concerning the force; for howſoever he may be puniſhable *at the king's ſuit*, for doing what is prohibited by ſtatute, as a contemner of the laws, and diſturber of the peace, yet he ſhall not be liable to pay any damages for it to the plaintiff, whoſe injuſtice gave him the provocation in that manner to right himſelf. 1 *Haw.* 141.

Yet ſtill forcible entry and detainer are offences at the common law; and the proſecutor, if he pleaſes, may proceed in that way: but then the indictment ought to expreſs not only the common technical words *with force and arms*, but alſo ſuch circumſtances as thereby it may appear upon the face of the indictment to be more than a common treſpaſs. *Burr. Manſf.* 1698, 1731.

But the ſafeſt and moſt uſual way is to proceed upon the ſtatutes. Concerning which, (after having premiſed, that *they who keep poſſeſſion with force, in lands and tenements, whereof they or their anceſtors, or they whoſe eſtate they have in the ſame, have continued their poſſeſſion in the ſame, by three whole years next before without interruption, ſhall not be endamaged by force of any of the ſtatutes concerning forcible entry*, 8 H. 6. c. 9. ſ. 7. 1 Haw. 152.) I ſhall conſider thoſe ſeveral ſtatutes, with the interpretation that hath been put upon them, under the following heads:

I. What is a forcible entry.
II. What is a forcible detainer.
III. How the ſame are puniſhable by action at law.
IV. How

IV. How puniſhable at the general ſeſſions.
V. How puniſhable by one juſtice.
VI. How puniſhable on a certiorari.
VII. How puniſhable as a riot.

I. What is a forcible entry.

By the 5 *R.* 2. *c.* 8 *None ſhall make any entry into any lands or tenements (or benefice of holy church,* 15 R. 2. c. 2. *or other poſſeſſions,* 8 H. 6. c. 9. ſ. 2.*) but where entry is given by the law; and in ſuch caſe not with ſtrong hand, nor with multitude of people, but only in peaceable and eaſy manner; on pain of impriſonment and ranſom at the king's will.*

Or other poſſeſſions] It ſeems clear, that no one can come within the danger of theſe ſtatutes, by a violence offered to another in reſpect of a *way*, or ſuch like eaſement, which is no poſſeſſion. And there ſeems to be no good authority, that an indictment will lie in this caſe for a *common*, or *office*. 1 *Haw.* 146.

Not with ſtrong hand, nor with multitude of people] It ſeems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for ſuch like purpoſe, without doing any act, which either expreſsly or impliedly amounts to a claim of ſuch lands, he cannot be ſaid to make an entry thereinto. 1 *Haw.* 144.

But it ſeemeth, that if a perſon enter into another man's houſe or ground, either with apparent violence offered to the perſon of any other, or furniſhed with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, graſs, or other goods, or to fell or crop wood, or do any other like treſpaſs, and tho' he do not put the party out of his poſſeſſion, yet it ſeemeth to be a forcible entry. *Dalt.* *c.* 126.

But if the entry were peaceable, and after ſuch entry made, they cut or take away any other man's corn, graſs, wood, or other goods, without apparent violence or force; tho' ſuch acts are counted a diſſeiſin with force, yet they are not puniſhable as forcible entries. *Dalt. c.* 126.

But if he enter peaceably, and there ſhall by force or violence cut or take away any corn, graſs, or wood, or ſhall forcibly or wrongfully carry away any other goods there being; this ſeemeth to be a forcible entry puniſhable by theſe ſtatutes. *Dalt. c.* 126.

So alſo ſhall thoſe be guilty of a forcible entry, who having an eſtate in land, by a defeaſible title, continue with force in the poſſeſſion thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* 145.

But he who barely agrees to a forcible entry made to his uſe, without his knowledge or privity, ſhall not be adjudged to make an entry within theſe ſtatutes, becauſe he no way concurred in, or promoted the force. 1 *Haw.* 145.

And, in general, it ſeemeth clear, that to denominate the entry forcible, it ought to be accompanied with ſome circumſtances of actual *violence*, or *terror*; and therefore that an entry which hath no other force than ſuch as is implied by the law, in every treſpaſs whatſoever, is not within theſe ſtatutes. 1 *Haw.* 145.

As to the matter of *violence*; it ſeems to be agreed, that an entry may be forcible, not only in reſpect of a violence actually done to the perſon of a man, as by beating him if he refuſe to relinquiſh his poſſeſſion, but alſo in reſpect of any other kind of violence in the manner of the entry, as by breaking open the doors of a houſe, whether any perſon be in it or not, eſpecially if it be a dwelling houſe, and perhaps alſo by an act of outrage after the entry, as by carrying away the party's goods; but it ſeems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *ſtrong hand*, or *multitude of people*; and it hath been holden, that a entry into a houſe thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145

In reſpect of the circumſtances of *terror*; it is to be obſerved, that wherever a man, either by his behaviour or ſpeech, at the time of his entry, gives thoſe who are in poſſeſſion juſt cauſe to fear, that he will do them ſome bodily hurt, if they will not give way to him, his entry is eſteemed forcible, whether he cauſe ſuch a terror, by carrying with him ſuch an unuſual number of attendants, or by arming himſelf in ſuch a manner, as plainly intimates a deſign, or by actually threatning to kill, maim, or beat thoſe who ſhall continue in poſſeſſion, or by giving out ſuch ſpeeches as plainly imply a purpoſe of uſing force, as if one ſay that he will keep his poſſeſſion in ſpite of all men, or the like. 1 *Haw.* 145.

But it ſeems that no entry ſhall be judged forcible from any threatning to ſpoil another's *goods*, or to deſtroy his cattle, or to do him any other ſuch like damage, which is not perſonal. 1 *Haw.* 146.

How-

However it is clear, that it may be committed by a ſingle perſon, as well as by twenty. 1 *Haw.* 146.

But nevertheleſs all thoſe who accompany a man, when he makes a forcible entry, ſhall be judged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It ſeemeth certain, that the ſame circumſtances of violence or terror which will make an entry forcible, will make a detainer forcible alſo. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw.* 146.

III. How are they puniſhable by action at law:

If any perſon be put out or diſſeiſed of any lands or tenements in forcible manner, or put out peaceably, and after holden out with ſtrong hand; the party grieved ſhall have aſſize of novel diſſeiſin, or writ of treſpaſs againſt the diſſeiſor; and if he recovers, he ſhall have treble damages, and the defendant moreover ſhall make fine and ranſom to the king. 8 H. 6. c. 9. ſ. 6.

The party grieved ſhall have aſſize, &c.] But this action, being at the ſuit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entreth with force, where his entry is lawful, he ſhall not be puniſhed by way of action; but yet he may be indicted upon the ſtatute, for the indictment is for the force, and for the king, and he ſhall make fine to the king, although his right is never ſo good. *Dalt. c.* 129.

Treble damages] And this he ſhall recover, as well for the meſne occupation, as for the firſt entry: And albeit he ſhall recover treble damages, yet he ſhall recover coſts, which ſhall be trebled alſo; for the word *damages* includeth coſts of ſuit. 1 *Inſt.* 257.

IV. How puniſhable at the general ſeſſions.

The party grieved, if he will loſe the benefit of his treble damages and coſts, may be aided and have the aſſiſtance of the juſtices at the general ſeſſions, by way of indictment (A) on the ſtatute of 8 *H.* 6. Which being found there, he ſhall be reſtored to his poſſeſſion, by a writ of reſtitution granted out of the ſame court to the ſheriff. *Dalt. c.* 129.

In the caption of which indictment, it will be ſufficient to ſay, *juſtices aſſigned to keep the peace of our lord*

the king, without ſhewing that they have authority to hear and determine felonies and treſpaſſes; for the ſtatute enables all juſtices of the peace, as ſuch, to take ſuch indictments. 1 *Haw.* 147.

And the tenement in which the force was made, muſt be deſcribed with convenient certainty; and muſt ſet forth that the defendant actually entred; and ouſted the party grieved; and continueth his poſſeſſion at the time of finding the indictment; otherwiſe he cannot have reſtitution, becauſe it doth not appear that he needeth it. 1 *Haw.* 147, 149, 150.

But if a man's wife, children, or ſervants do continue in the houſe or upon the land, he is not ouſted of his poſſeſſion; but his cattle being upon the ground, do not preſerve his poſſeſſion. *Dalt. c.* 132.

An indictment for forcible entry was quaſhed, for not ſetting forth, that the party was ſeiſed or diſſeiſed, or what eſtate he had in the tenement; for if he had only a term for years, then the entry muſt be laid, into the freehold of *A.* in the poſſeſſion of *B.* 3 Salk. 169.

V. How puniſhable by one juſtice.

1. For a more ſpeedy remedy, the party grieved may complain to any one juſtice; or to a mayor, ſheriff, or bailiff, within their liberties. 8 *H.* 6. *c.* 9.

2. But altho' one juſtice alone may proceed in ſuch caſes, yet it may be adviſeable for him, if the time for viewing the force will ſuffer it, to take to his aſſiſtance one or two more juſtices.

3. Concerning which power of one juſtice, it is enacted as follows:

After complaint made to ſuch juſtice, by the party grieved, of a forcible entry made into lands, tenements, or other poſſeſſions, or forcible holding thereof, he ſhall within a convenient time, at the coſts of the party grieved (without any examining or ſtanding upon the right or title of either party) *take ſufficient power of the county, and go to the place where ſuch force is made.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2. Dalt. c. 44.

Complaint —— by the party grieved] Yet theſe words do not inforce any neceſſity of ſuch a complaint; for it is holden, that the juſtice may and ought to proceed, upon any information or knowledge thereof whatſoever, though no complaint at all be brought unto him, by any party grieved thereby. *Lamb.* 147.

Power

Power of the county.] All people of the county, as well the ſheriff as other, ſhall be attendant on the juſtices, to arreſt the offenders; on pain of impriſonment and fine to the king. 15 *R.* 2. *c.* 2.

4. And if the doors be ſhut, and they within the houſe ſhall deny the juſtice to enter, it ſeems he may break open the houſe, to remove the force. *Dalt. c.* 44.

5. And if after ſuch entry made the juſtice *ſhall find ſuch force; he ſhall cauſe the offenders to be arreſted.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2.

6. He ſhall alſo take away their weapons and armour, and cauſe them to be appraiſed, and after to be anſwered to the king as forfeited, or the value thereof. *Dalt. c.* 44.

7. Alſo ſuch juſtice ought to *make a record* (B) *of ſuch force by him viewed*; which record ſhall be a ſufficient conviction of the offenders, and the parties ſhall not be allowed to traverſe it: And this record, being made out of the ſeſſions, by a particular juſtice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and the other part he may keep himſelf. For this view of the force by the juſtice, being a judge of record, maketh his record thereof in the judgment of the law, as ſtrong and effectual, as if the offenders had confeſſed the force before him; and touching the reſtraining of traverſe, more effectual, than if the force had been found by a jury, upon the evidence of others. (This is, as to the fine and impriſonment, but not as to reſtitution.) 15 *R.* 2. *c.* 2. *Dalt. c.* 44.

8. And the offenders, being arreſted (as before is ſaid), *ſhall be put in the next gaol* (C) *there to abide convict by the record of the ſame juſtice, until they have made fine and ranſom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is ſaid, that the juſtice hath no powder to commit the offender to gaol, unleſs he do it upon his own view of the fact, and not upon the jury finding the ſame afterwards. *Dalt. c.* 44. 1 *Haw.* 142.

And if ſuch offenders, being in the houſe at the coming of the juſtice, ſhall make no reſiſtance, nor make ſhew of any force, then the juſtice cannot arreſt or remove them at all upon ſuch view. *Dalt. c.* 44.

But howſoever, if the force be found afterwards, by the inquiry of the jury, the juſtice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after ſend them to the gaol, until they have found ſureties for the peace. *Dalt. c.* 44.

Note; Mr. *Dalton*, in this place ſays, *good behaviour*, which I have preſumed to alter to *the peace*, as deeming it much the ſafer; and not being ſufficiently ſatisfied concerning the power of a juſtice of the peace to bind to the good behaviour in the like caſes, which power Mr. *Dalton* hath enlarged more than all other authors, without any aſſiſtance from the commiſſion of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] *H.* 1 *G.* 2. *K.* and Sir *Edm. Elwell.* He was brought up upon a *habeas corpus*, with a return of the cauſe of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to diſcharge him upon exceptions to the commitment, the court refuſed to enter into the conſideration of them, till the conviction was likewiſe regularly removed before them. But by conſent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine ſet by the juſtices, and it was therefore moved to be quaſhed. It was agreed on both ſides, that there ſhould be a fine; but it was inſiſted, that it being now before the king's bench by a certiorari, they might ſet the fine. But by the court, We are not to execute the judgment of an inferior court. The conviction is to be upon view, and they who view the nature of the force are the propereſt judges what fine to ſet; and though a certiorari ſhould come before the fine is ſet, yet it would be no contempt in the juſtices to compleat their judgment by ſetting one. *Lambard* indeed was of opinion, that the juſtices could not ſet the fine at all; but upon what foundation we can never imagine. The juſtices are not bound to do it upon the ſpot, but may take a reaſonable time to conſider of the fine; becauſe by the words of the act, the commitment is to be, till he has paid the fine. The conviction muſt be quaſhed, and the defendant diſcharged. *Str.* 794. L. *Raym.* 1515. *Seſſ. C. V.* 1. 289.

And the ſame was likewiſe ſolemnly reſolved in *Leighton*'s caſe; and that the juſtice may aſſeſs the ſame, either before the commitment or after. 1 *Haw.* 142.

And the fine muſt be aſſeſſed upon every offender ſeverally, and not upon them jointly; and the juſtice ought to eſtreat the fine, and to ſend the eſtreat into the exchequer, that from thence the ſheriff may be commanded to levy it for his majeſty's uſe. *Dalt. c.* 44.

But upon payment of the fine to the ſheriff, or upon ſureties found (by recognizance) for the payment thereof, it

it ſeemeth that the juſtice may deliver the offenders out of priſon again at his pleaſure. *Dalt. c.* 44.

9. And ſo much concerning removing the force: But the party ouſted cannot be reſtored to his poſſeſſion by the juſtice's view of the force; nor unleſs the ſame force be found by the inquiry of a jury.

Concerning which it is enacted as follows: *And tho' that the perſons making ſuch entry be preſent, or elſe departed before the coming of the juſtice; he may notwithſtanding in ſome good town next to the tenements ſo entred, or in ſome other convenient place by his diſcretion* (and that, though he go not to ſee the place where the force is; *Dalt. c.* 44.) *have power to inquire by the people of the county, as well of them that make ſuch forcible entry, as of them which hold the ſame with force.* 8 H. 6. c. 9. ſ. 3.

10. In order to which, *the juſtice ſhall make his precept* (D) *to the ſheriff, commanding him in the king's behalf, to cauſe to come before him, ſufficient and indifferent perſons, dwelling next about the lands ſo entred, to inquire of ſuch entries; whereof every man ſhall have lands or tenements of* 40 s *a year, above reprizes. And the ſheriff ſhall return iſſues on every of them, at the day of the firſt precept returnable* 20 s, *and at the ſecond day* 40 s, *and at the third day* 100 s, *and at every day after double. And the ſheriff making default, ſhall on conviction before the ſame juſtice, or before the judge of aſſize, forfeit* 20 l, *half to the king, and half to him who ſhall ſue, with coſts; and moreover ſhall make fine and ranſom to the king.* 8 H. 6. c. 9. ſ. 4, 5.

Before the ſame juſtice] And the juſtice may proceed againſt the ſheriff for this default, either by bill at the ſuit of the party, or by indictment at the ſuit of the king. *Dalt. c.* 44.

11. And the defendant alſo, if he is not preſent, ought to be called to anſwer for himſelf; for it is implied by natural juſtice in the conſtruction of all laws, that no one ought to ſuffer any prejudice thereby, without having firſt an opportunity of defending himſelf. 1 *Haw.* 154.

12. And it ſeems to be ſettled at this day, that if the defendant tender a *traverſe* of the force, the juſtice ought not to make any reſtitution, till the traverſe be tried. 1 *Haw.* 154.

13. The defendant may alſo by the 31 *El. c.* 11. plead *three years poſſeſſion*; whereby it is enacted, *that no reſtitution upon an indictment of forcible entry, or holding with force, ſhall be made, if the perſon indicted heve had the occupation, or been in quiet poſſeſſion for three years together next before the indictment found, and his eſtate therein not determined;*

and reſtitution ſhall ſtay till that be tried: and if it is found againſt the party indicted, he ſhall pay ſuch coſts and damages as the judges or juſtices ſhall aſſeſs; to be recovered as coſts and damages in judgment on other actions.

And it hath been holden that the plea of ſuch poſſeſſion is good, without ſhewing under what title, or of what eſtate ſuch poſſeſſion was; becauſe it is not the title, but poſſeſſion only, which is material in this caſe. 1 *Haw.* 152.

14. And it was holden by the court in *Leighton*'s caſe, that if the defendant ſhall either traverſe the entry or the force, or plead that he has been three years in poſſeſſion, the juſtice may ſummon a jury for the trial of ſuch traverſe, for it is impoſſible to determine it upon view; and if the juſtice have no power to try it, it would be eaſy for any one to elude the ſtatute by the tender of ſuch a traverſe, and therefore by a neceſſary conſtruction the juſtice muſt needs have this power as incidental to what is expreſly given him. 1 *Haw.* 142.

15. And this traverſe muſt be tendred in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* muſt be awarded, a jury returned, the iſſue tried, a verdict found, and judgment given, and coſts and damages awarded; and there muſt be a record, which muſt be in writing, to do all this, and not a verbal plea. *Dalt. c.* 133. 1 *Haw.* 154.

16. Upon which traverſe tendred, the juſtice ſhall cauſe a new jury to be returned by the ſheriff, to try the traverſe; which may be done the next day, but not the ſame day. *Dalt. c.* 133.

17. And it ſeemeth, that he who tendreth the traverſe, ſhall bear all the charges of the trial; and not the king, or the party proſecuting. *Dalt. c.* 133.

18. And *if ſuch forcible entry or detainer be found* (E) *before ſuch juſtice, then the ſaid juſtice ſhall cauſe to reſeiſe* (F) *the lands and tenements ſo entred or holden, and ſhall reſtore the party put out, to the full poſſeſſion of the ſame.* 8 H. 6. c. 9. ſ. 3.

The ſaid juſtice] It ſeems to be agreed, that no other juſtices of the peace, except thoſe before whom the indictment ſhall be found, ſhall have any power either at the ſeſſions or out of it, to make any award of reſtitution. 1 *Haw.* 152.

Shall cauſe to reſeiſe] And the juſtice may break open the houſe by force, to reſeiſe the ſame; and ſo may the ſheriff do, having the juſtice's warrant. *Dalt. c.* 44.

Reſeiſe]

Reſeiſe] That is, ſhall remove the force, by putting out all ſuch offenders as ſhall be found in the houſe, or upon the lands, that entred or held with force. *Dalt.* c. 130.

And ſhall reſtore the party put out] And this he may do in his own proper perſon; or he may make his warrant to the ſheriff to do it. *Dalt.* c. 44. 1 *Haw.* 151, 2.

19. And by 21 *J.* c. 15. it is enacted, *that ſuch judges, juſtices, or juſtice of the peace, as may give reſtitution unto tenants of any eſtate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's ſervice, tenants by* elegit, *ſtatute merchant and ſtaple, of lands or tenements by them ſo holden, which ſhall be entred upon by force, or holden from them by force.*

VI. How puniſhable on a certiorari.

Although regularly the juſtices only who were preſent at the inquiry, and when the indictment was found ought to award reſtitution; yet if the record of the preſentment or indictment ſhall be certified by the juſtice or juſtices into the king's bench, or the ſame preſentment or indictment be removed and certified thither by certiorari, the juſtices of that court may award a writ of reſtitution to the ſheriff, to reſtore poſſeſſion to the party expelled; for the juſtices of the king's bench have a ſupreme authority in all caſes of the crown. *Dalt.* c. 44.

Alſo where upon a removal of the proceedings into the king's bench the conviction ſhall be quaſhed, the court will order reſtitution to the party injured. As in the caſe of *K.* and *Jones*, *M.* 8 *G.* A conviction of forcible entry was quaſhed for the old exception of *meſſuage* or *tenement*, by reaſon of the uncertainty; but the reſtitution was oppoſed, on an affidavit that the party's title (which was by leaſe) was expired ſince the conviction. But the court ſaid, they had no diſcretionary power in this caſe, but were bound to award reſtitution on quaſhing the conviction. *Str.* 474.

VII. How puniſhable as a riot.

If a forcible entry or detainer ſhall be made by three perſons or more, it is alſo a riot, and may be proceeded againſt as ſuch, if no inquiry hath before been made of the force. *Dalt.* c. 44.

A. In-

A. Indictment for a forcible entry and detainer.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. I. *late of the pariſh of* ——— *in the county aforeſaid, gentleman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was poſſeſſed of a certain meſſuage, with the appurtenances, ſituate, lying, and being in* ——— *in the pariſh aforeſaid, in the county aforeſaid, for a certain term of years, then and ſtill to come, and unexpired, and being ſo poſſeſſed thereof, one* A. O. *late of* ——— *in the ſaid county, yeoman, afterwards, to wit, the ſaid* —— *day of* ——— *in the year aforeſaid, into the ſame meſſuage, with the appurtenances aforeſaid, in* ——— *aforeſaid, in the pariſh and county aforeſaid, with force and arms, and with ſtrong hand, unlawfully did enter, and the ſaid* A. I. *from the peaceable poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, then and there with force and arms, and with ſtrong hand, unlawfully did expel and put out, and the ſaid* A. I. *from the poſſeſſion thereof, ſo as aforeſaid, with force and arms, and with ſtrong hand, being unlawfully expelled and put out, the ſaid* A. O. *him the ſaid* A. I. *from the aforeſaid* ——— *day of* ——— *in the year aforeſaid, until the day of the taking this inquiſition, from the poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, with force and arms, and with ſtrong hand, unlawfully and injurioufly then and there did keep out, and doth ſtill keep out, to the great damage of the ſaid* A. I. *againſt the peace of our ſaid lord the king, and againſt the form of the ſtatutes in that caſe made and provided.*

Note; If it is a freehold, then the party muſt be ſaid to be *ſeiſed* thereof in his demeſne as of fee; and conſequently he muſt be thereof *diſſeiſed:* otherwiſe if it is of a leſſer eſtate, of which he is not properly ſaid to be *ſeiſed*, but poſſeſſed thereof at the will of the lord, according to the cuſtom of the manor, or the like, and then he muſt be *expelled, ejected, amoved*, or the like.

B. Record of a forcible detainer upon view.

Note; The books upon the office of a juſtice of the peace generally ſet forth, that the record ought to be in the preſent tenſe, and not in the time paſt (and herewith do accord the adjudged caſes in the court of king's bench, *Str.* 443.); yet nevertheleſs they all exhibit the form of a record in the time paſt, and not in the preſent: Therefore

Therefore I have taken the liberty to alter the ſame, from the record in L. *Raymond* of the conviction of Sir *Edm. Elwell* aforeſaid, and others; adding the fine thereunto, for the want of which that conviction was quaſhed. And I have given the form of a record of a forcible *detainer*, rather than of a forcible *entry*, becauſe the juſtice for the moſt part cannot be ſuppoſed to be preſent at the entry, as not having knowledge thereof until after the entry is made.

Kent, to wit. BE *it remembred, that on the* 15*th of* September, *in the firſt year of the reign of our ſovereign lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* Beckingham *in the county of* Kent *aforeſaid*, Eliz. Elwell *complaineth to us* Sir E. Bettenſon, *baronet*, P. Burrell, *and* W. Paſſenger, *eſquires, three of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes and other miſdemeanors in the ſaid county committed, that* Sir Edm. Elwell, *late of* London, *baronet*, Joſeph Billers, *late of* —— *and* Daniel Monty, *late of* —— *into the meſſuage of her the ſaid* E. E. *being the manſion houſe of her the ſaid* E. E. *called* Langley houſe, *ſituate within the pariſh of* Beckingham *aforeſaid, did enter, and her the ſaid* E. E. *of the meſſuage aforeſaid, whereof the ſaid* E. E. *at the time of the entry aforeſaid, was ſeiſed as of the freehold of her the ſaid* E. E. *for the term of her life, unlawfully ejected, expelled, and amoved, and the ſaid meſſuage from her the ſaid* El. E. *unlawfully, with ſtrong hand and armed power, do yet hold and from her detain, againſt the form of the ſtatute in ſuch caſe made and provided; whereupon the ſame* El. E. *then, to wit, on the ſaid* 15*th day of* Sep. *at the pariſh of* B. *aforeſaid, prayeth of us, ſo as aforeſaid being juſtices, to her in this behalf that a due remedy be provided, according to the form of the ſtatute aforeſaid: Which complaint and prayer by us the aforeſaid juſtices being heard, we the aforeſaid* E. B. *baronet*, P. B. *and* W. P. *eſquires, juſtices aforeſaid, to the meſſuage aforeſaid perſonally have come, and do then and there find and ſee the aforeſaid* Edm. E. J. B. *and* D. M. *the aforeſaid meſſuage, with force and arms, unlawfully, with ſtrong hand and armed power, detaining, againſt the form of the ſtatute in ſuch caſe made and provided, according as ſhe the ſame* El. E. *ſo as aforeſaid hath unto us complained: Therefore it is conſidered by us the aforeſaid juſtices, that the aforeſaid* Edmund Elwell, Joſeph Billers, *and* Daniel Monty, *of the detaining aforeſaid with ſtrong hand, by our own proper view then and there as is aforeſaid had, are*

are convicted, and every of them is convicted, according to the form of the ſtatute aforeſaid; Whereupon we the juſtices aforeſaid, upon every of the aforeſaid Ed. E. J. B. *and* D. M. *do ſet and impoſe ſeverally a fine of* 10l *of good and lawful money of* Great Britain, *to be paid by them and every of them ſeverally to our ſaid ſovereign lord the king, for the ſaid offences; and do cauſe them, and every of them, then and there to be arreſted; and the ſame* Ed. E. J. B. *and* D. M. *being convicted, and every of them being convicted upon our own proper view, of the detaining aforeſaid, with ſtrong hand as is aforeſaid, by us the aforeſaid juſtices are committed, and every of them is committed, to the gaol of our ſaid lord the king, at* Maidſtone, *in the county of* Kent *aforeſaid, being the next gaol to the meſſuage aforeſaid, there to abide reſpectively, until they ſhall have paid their ſeveral fines reſpectively, to our ſaid lord the king, for their reſpective offences aforeſaid. Concerning which the premiſſes aforeſaid, we do make make this our record. In witneſs whereof, we the aforeſaid* E. B. *baronet,* P. B. *and* W. P. *eſquires, the juſtices aforeſaid, to this record our hands and ſeals do ſet, at the pariſh of* B. *aforeſaid, in the county of* Kent *aforeſaid, on the* 15th *day of* Sep. *in the firſt year aforeſaid of the reign of our ſaid ſovereign lord the now king.*

C. Mittimus for forcible detainer.

Weſtmorland. EDWARD Haſſel, *eſquire, one of the juſtices of our ſovereign lord the king's majeſty, aſſigned to keep the peace within the ſaid county of* W. *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the keeper of his majeſty's gaol at* ——— *in the ſaid county, and to his deputy and deputies there, and to every of them, greeting: Whereas upon complaint made unto me this preſent day, by* A. I. *of* ——— *in the ſaid county, yeoman, I went immediately to the dwelling houſe of the ſaid* A. I. *at* ——— *aforeſaid in the ſaid county, and there found* A. O. *late of* ——— *labourer,* B. O. *late of the ſame, weaver, and* C. O. *late of* ——— *butcher, forcibly with ſtrong hand and armed power, holding the ſaid houſe, againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided: Therefore I ſend you, by the bringers hereof, the bodies of the ſaid* A. O. B. O. *and* C. O. *convicted of the ſaid forcible holding, by mine own view, teſtimony and record; commanding you in his ſaid majeſty's name to receive them into your ſaid gaol, and there ſafely to keep them, and*

every

every of them reſpectively, until they ſhall have reſpectively paid the ſeveral ſum of 10 l, *of good and lawful money of* Great Britain, *to our ſaid ſovereign lord the king, which I have ſet and impoſed upon every of them ſeparately, for a fine and ranſom for their ſaid treſpaſſes reſpectively. Herein fail you not, at the peril that may follow thereof. Given at —— aforeſaid, in the county aforeſaid, under my ſeal, the —— day of —— in the —— year of the reign of our ſaid ſovereign lord king* George *the third.*

Note; By the forms in all the books, all the offenders ſtand committed until all have paid, ſo as that the firſt ſhall not be diſcharged on payment of his own fine, but continue until all the reſt have paid likewiſe; which ſeems unreaſonable, and is not warranted by the ſtatute.

D. Precept to the ſheriff to return a jury.

Weſtmorland. RICHARD Whinfield, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the ſheriff of the ſaid county, greeting: On behalf of our ſaid lord the king, I command you, that you cauſe to come before me at———in the county aforeſaid, on the———day of———next enſuing, twenty four ſufficient and indifferent men, of the neighbourhood of——— aforeſaid, in the county aforeſaid, every of whom ſhall have lands or tenements of* 40 s *yearly at the leaſt, above reprizes, to inquire upon their oaths for our ſaid lord the king, of a certain entry made with ſtrong hand (as it is ſaid) into the meſſuage of one* A. I. *at———aforeſaid, in the county aforeſaid, againſt the form of the ſtatute in ſuch caſe made and provided. And you are to return upon every of the jurors by you in this behalf to be impannelled,* 20 s *of iſſues at the aforeſaid day. And have you then there this precept. And this you ſhall in no wiſe omit, upon the peril that ſhall thereof enſue. Witneſs the ſaid* R. W. *at ——— in the county aforeſaid, the———day of———in the———year of the reign of———*

The jurors oath.

YOU *ſhall true inquiry and preſentment make of all ſuch things as ſhall come before you, concerning a forcible entry*

[or

[or *detainer*] *ſaid to have been lately committed in the dwelling houſe of* ——— *yeoman, at* ——— *in this county; you ſhall ſpare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the beſt of your knowledge, and according to the evidence that ſhall be given to you: So help you God.*

The oath that A. F. *your foreman hath taken on his part, you and every of you ſhall truly obſerve, and keep on your parts: So help you God.*

E. The inquiſition, indictment, or finding of the jury.

Weſtmorland. AN *inquiſition for our ſovereign lord the king, indented and taken at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oaths of* ——— *good and lawful men of the ſaid county, before* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, who ſay upon their oaths aforeſaid, that* A. I. *of* ——— *aforeſaid, yeoman, long ſince lawfully and peaceably was ſeiſed in his demeſne as of fee* [if it is not freehold, then ſay, *poſſeſſed*] *of and in one meſſuage, with the appurtenances, in* ——— *aforeſaid, in the county aforeſaid, and his ſaid poſſeſſion* [*and ſeiſin*] *ſo continued until* A. O. *late of* ——— *yeoman,* B. O. *late of the ſame, yeoman, and* C. O. *late of the ſame, yeoman, and other malefactors unknown, the* ——— *day of* ——— *now laſt paſt, with ſtrong hand and armed power, into the meſſuage aforeſaid, with the appurtenances aforeſaid, did enter, and him the ſaid* A. I. *thereof diſſeiſed, and with ſtrong hand expelled; and him the ſaid* A. I. *ſo diſſeiſed and expelled from the ſaid meſſuage with the appurtenances aforeſaid, from the ſaid* ——— *day of* ——— *until the day of the taking of this inquiſition, with like ſtrong hand and armed power did keep out, and do yet keep out, to the great diſturbance of the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided.*

We whoſe names are hereunto ſet, being the jurors aforeſaid, do upon the evidences now produced before us, find the inquiſition aforeſaid true.

A. B.
C. D. &c.

F. Warrant to the ſheriff for reſtitution.

Weſtmorland. MARTIN Dunn, *eſquire, one of the juſtices of our ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed: To the ſheriff of the ſaid county, greeting: Whereas by an inquiſition taken before me the juſtice aforeſaid, at ——— in the county aforeſaid, on this preſent ———day of———in the———year of the reign of——— upon the oaths of———and by virtue of the ſtatutes made and provided in caſes of forcible entry and detainer, it is found, that* A. O. *late of———yeoman, and* B. O. *late of———yeoman, on the——day of——now laſt paſt, into a certain meſſuage, with the appurtenances, of* A. I *of——— aforeſaid, in the county aforeſaid, gentleman, ſituate, lying, and being at ———aforeſaid, in the county aforeſaid, with force and arms did enter, and him the ſaid* A. I. *thereof then with ſtrong hand did diſſeiſe and drive out, and him the ſaid* A. I. *thus driven out from the aforeſaid meſſuage, with the appurtenances, from the——day of—— aforeſaid, to this preſent day of the taking of the ſaid inquiſition, with ſtrong hand and armed force did keep out, and do yet keep out, as by the inquiſition aforeſaid more fully appeareth of record: Therefore on the behalf of our ſaid ſovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the ſaid meſſuage and other the premiſſes, and the ſame with the appurtenances you cauſe to be reſeiſed, and that you cauſe the ſaid* A. I. *to be reſtored and put into his full poſſeſſion thereof, according as he, before the entry aforeſaid, was ſeiſed, according to the form of the ſaid ſtatutes. And this you ſhall in no wiſe omit, on the penalty thereon incumbent. Given under my hand and ſeal at ——in the ſaid county, the——day of———in the———year of the reign of———*

Foreign Manufacture.

Artificers going out of the kingdom.

1. BY the 5 *G. c.* 27. If any perſon ſhall contract with, entice, or endeavour to perſuade any manufacturer or artificer in wool, iron, ſteel, braſs, or any other metal, clockmaker, watchmaker, or any other artificer or manufacturer, to go out of this kingdom, into any foreign country out of his majeſty's dominions, and ſhall (on proſecution in 12 months) be convicted thereof on indictment or information, in the courts at *Weſtminſter*, aſſizes or ſeſſions

ſions of the county where the offence ſhall be committed; he ſhall for the firſt offence be fined not exceeding 100l, and be impriſoned for three months, and until the fine be paid; for the ſecond offence, ſhall be fined at the diſcretion of the court, and be impriſoned 12 months, and till the fine is paid. *ſ.* 1, 2.

And if any ſubject, being ſuch artificer or manufacturer, ſhall go into any country out of his majeſty's dominions, to exerciſe or teach any the ſaid manufactories to foreigners, or if any ſubject who ſhall be in any ſuch foreign country, and there exerciſe any the ſaid manufactories, ſhall not return in ſix months next after warning be given him, by the ambaſſador, miniſter, or conſul, or perſon authorized by him, or by a ſecretary of ſtate, and from thenceforth continually inhabit within this realm; he ſhall be incapable of any legacy, or of being executor, or adminiſtrator, and of taking any lands, by deſcent, deviſe, or purchaſe, and forfeit his lands and goods, and be deemed an alien, and out of the king's protection. *ſ.* 3.

And on complaint on oath before a juſtice, that any perſon is endeavouring to ſeduce or draw away any ſuch manufacturer or artificer, or that he hath contracted or is preparing to go out of the kingdom; he may iſſue his warrant to bring ſuch perſon before him or ſome other juſtice; and if it ſhall appear to ſuch juſtice by confeſſion, or the oath of one witneſs, that ſuch perſon was guilty of any the ſaid offences, he may bind him over to the next aſſizes or ſeſſions, to anſwer the premiſſes; and if he ſhall upon indictment be there convicted of any ſuch promiſe or contract, or preparation to go abroad beyond the ſeas, he ſhall give ſuch ſecurity, not to depart out of the realm, as ſuch court ſhall think reaſonable, and be impriſoned until ſuch ſecurity be given. *ſ.* 4.

And by the 23 *G.* 2. *c.* 13. If any perſon ſhall contract with, or endeavour to perſuade or ſeduce any artificer in the manufactures of *Great Britain*, to go into any foreign country, not belonging to the crown of *Great Britain*; and ſhall be thereof convicted, in twelve months, in the king's bench, or at the aſſizes; he ſhall for every ſuch perſon forfeit 500l, and be impriſoned in the common gaol for twelve months, and till payment of the forfeiture; and for a ſecond or other ſubſequent offence, ſhall forfeit 1000l, and be impriſoned two years, and till payment. *ſ.* 1, 2.

Tools and utenſils carried out of the kingdom.

2. By the 23 *G.* 2. *c.* 13. If any perſon ſhall put on board any veſſel not bound directly to ſome of the *Britiſh* dominions,

dominions, any tools or utenſils, or part thereof proper for either the *woollen or ſilk manufactures*; he ſhall forfeit the ſame, and 200l. *ſ.* 3.

And any officer of the cuſtoms may ſeize, and ſecure in ſome of the king's warehouſes, all ſuch tools and utenſils as ſhall be found on board any ſuch veſſel; and the ſame, after condemnation, ſhall be publickly ſold. *ſ.* 4.

And if the maſter or captain ſhall knowingly permit any the ſaid tools or utenſils to be put on board his ſhip; he ſhall forfeit 100l, and if it is a king's ſhip he ſhall alſo forfeit his office, and be incapable of any office under the crown. *ſ.* 5.

And if any officer of the cuſtoms ſhall take any entry outward or ſign any ſufferance for ſhipping or exporting any the ſaid tools, or knowingly permit the ſame to be done; he ſhall forfeit 100l, and his office, and be incapable of any office under the crown. *ſ.* 6.

All which ſaid penalties, on this act ſhall be half to the king, and half to him that ſhall proſecute. *ſ.* 7.

And by the 14 *G.* 3. *c.* 71. If any perſon ſhall put on board any veſſel not bound directly to ſome port in *Great Britain* or *Ireland*, any tools or utenſils, or part thereof, proper for the *cotton or linen manufactures*; he ſhall forfeit the ſame, and alſo 200l. *ſ.* 1.

And any officer of the cuſtoms may ſeize and ſecure in ſome of the king's warehouſes, all ſuch tools and utenſils or parts thereof as he ſhall find in any ſuch veſſel; and the ſame, after condemnation, ſhall be publickly ſold: and half the produce thereof ſhall be to the king, and half to the officer who ſhall ſeize the ſame. *ſ.* 2.

And if the captain or maſter ſhall knowingly permit any ſuch tools or utenſils to be put on board his ſhip, he ſhall forfeit 200l; and if it is a king's ſhip, he ſhall alſo forfeit his office, and be incapable of any office under the crown. *ſ.* 3.

And if any officer of the cuſtoms ſhall take any entry outward, or ſign any ſufferance for ſhipping or exporting any the ſaid tools or utenſils, or knowingly permit the ſame; he ſhall forfeit 200l, and his office, and be incapacitated. *ſ.* 4.

And if any perſon ſhall have in his poſſeſſion any ſuch tools or implements proper for the *cotton* or *linen* manufactures, or any tools or implements uſed in the *woollen* or *ſilk* manufactures (except ſtock cards not exceeding 4s a pair, and ſpinners cards not exceeding 1s 6d a pair, intended to be exported to *North America*, 15 *G.* 3. *c.* 5.) and oath ſhall be made before one juſtice that there is rea-

ſon to believe ſuch perſon hath in his poſſeſſion ſuch tools or implements, or part thereof, with intent to export the ſame to ſome other part or place than *Great Britain* or *Ireland*; ſuch juſtice ſhall iſſue his warrant to ſeize all ſuch tools or implements and parts thereof, and alſo to bring the perſon complained of before him or ſome other juſtice: And if he ſhall not give a ſatisfactory account to ſuch juſtice, of the uſe or purpoſe to which ſuch tools or utenſils are intended to be appropriated, the ſaid juſtice ſhall cauſe the ſame to be detained, and bind the perſon ſo charged, with reaſonable ſureties, to appear at the next aſſizes or ſeſſions; and if he ſhall not give ſuch ſecurity, the juſtice ſhall commit him to gaol till the next aſſizes or ſeſſions, and until he ſhall be delivered by due courſe of law. And if he ſhall be there convicted, he ſhall forfeit 200l. *ſ.* 5.

All which forfeitures by this act inflicted on offenders ſhall be applied half to the king, and half to him who ſhall ſue. *ſ.* 6.

And by the 21 *G.* 3. *c.* 37. If any perſon ſhall put on board or pack in order to be put on board any veſſel not bound directly to any port in Great Britain or Ireland, or ſhall bring to any wharf or other place in order to be ſo put on board any ſuch veſſel, any machine, engine, tool, preſs, paper, utenſil, or implement, or any part, model, or plan thereof, proper for the *woollen*, *cotton*, *linen*, or *ſilk* manufactures; one juſtice, on complaint upon oath by one witneſs, may iſſue his warrant to ſeize the ſame, together with the package, and other goods packed therewith (if any ſuch there be), and to bring the perſon complained of before him or ſome other juſtice; and if he ſhall not give to ſuch juſtice a ſatisfactory account of the purpoſe to which the ſame are intended to be appropriated, the juſtice ſhall cauſe the ſame to be detained, and bind the party to appear at the next aſſizes or quarter ſeſſions, and on neglect or refuſal ſo to do, ſhall commit him to the goal or houſe of correction until the next aſſizes or ſeſſions, and until delivered by due courſe of law. And on conviction at ſuch aſſizes or ſeſſions, upon indictment or information, he ſhall forfeit all the ſaid goods, and alſo 200l, and be impriſoned in the common gaol or houſe of correction for 12 months, and until the forfeiture ſhall be paid. *ſ.* 1.

And the officers of the cuſtoms may ſeize any ſuch goods; and after condemnation in due courſe of law, the ſame ſhall be ſold by order of the commiſſioners to the beſt bidder, and the produce thereof, after charges deducted,

ducted, ſhall go half to the king, and half to the officer who ſhall ſeize and proſecute. *ſ.* 2.

And if the captain or maſter of any veſſel ſhall knowingly permit any ſuch goods to be put on board; he ſhall forfeit 200l, and if it is a king's ſhip he ſhall alſo forfeit his office, and be incapable to hold any office under the crown. *ſ.* 3.

And if any officer of the cuſtoms ſhall take any entry outward, or ſign any ſufferance for the ſhipping or exporting the ſame, or knowingly permit the ſame to be done; he ſhall forfeit 200l, and his office, and be incapacitated. *ſ.* 4.

And if any perſon hath in his cuſtody, or ſhall apply for, or procure to be made, any ſuch machine or implement as aforeſaid; he ſhall, on the like conviction, forfeit the ſame, and alſo 200l, and be impriſoned for 12 months and until the forfeiture ſhall be paid. Proſecution upon this clauſe to be within 12 months after the offence committed. *ſ.* 6.

The ſaid forfeitures, not herein otherwiſe directed, to go to the informer, after the expences of proſecution paid. *ſ.* 7.

Provided, that nothing herein ſhall extend to the preventing woollen cards or ſtock cards, not exceeding in value 4s a pair, and ſpinners cards not exceeding 1s 6d a pair, from being exported to any of his majeſty's colonies in *America*. *ſ.* 9.

Finally: By the 22 *G.* 3. *c.* 60. If any perſon ſhall contract with or endeavour to perſuade any artificer concerned in printing callicoes, cottons, muſlins, or linens of any ſort, or in preparing any blocks, plates, engines, tools, or utenſils for ſuch manufactory, to go out of the kingdom, and be convicted thereof in the king's bench or at the aſſizes, he ſhall forfeit 500l, and be impriſoned for 12 months; for a ſecond offence 1000l, and be impriſoned for 2 years.

And if any perſon ſhall export or attempt to export any blocks, plates, engines, tools, or utenſils, commonly uſed in the callicoe, cotton, muſlin, or linen printing manufactures; he ſhall forfeit the ſame, and alſo 500l, to be recovered in the courts at Weſtminſter.

And any officer of the ſhip conniving thereat ſhall forfeit 500l; and if it is a king's ſhip, he ſhall alſo be incapacitated.

Foreign Service.

IF any ſubject ſhall inliſt or enter himſelf, or ſhall engage to go beyond the ſeas or embark with intent to inliſt and enter himſelf, altho' no inliſting money be actually paid to him; or if any perſon ſhall procure any ſubject to inliſt or enter himſelf, or hire or retain any ſubject, with intent to cauſe him to inliſt or enter himſelf, or retain, engage, or procure any ſubject (tho' no inliſting money be paid) to go beyond the ſeas or embark with intent and in order to be inliſted to ſerve any foreign prince, ſtate, or potentate, as a ſoldier, without his majeſty's leave; he ſhall be guilty of felony without benefit of clergy. 9 *G.* 2. *c.* 30. *ſ.* 1. 29 *G.* 2. *c.* 17. *ſ.* 4.

And offences committed out of the realm may be tried in any county in *England.* 9 *G.* 2. *c.* 30. *ſ.* 2.

But if any perſon ſo inliſted, or enticed to go beyond the ſeas in order to be inliſted, as a non-commiſſion officer or private ſoldier, in any foreign ſervice, ſhall in 14 days voluntarily diſcover upon oath, before any juſtice or other civil magiſtrate, the perſon by whom he was inliſted or enticed, ſo as he be convicted, he ſhall be indemnified. *ſ.* 3.

Foreſtalling, ingroſſing, and regrating

Derivation.

FOre*ſtalling (foreſtællan*, or *foreſtallan)* in the Engliſh Saxon ſignifieth properly to *market before the publick*, or to *prevent the publick market*; and metaphorically, to *intercept* in general: and ſeemeth derived from *fore*, which is the ſame as *before*, and *ſtalle*, a ſtanding place or department; from whence ſprang the antient word *ſtallage*, which ſignifieth money paid for erecting a ſtall or ſtand, for the ſelling of goods in a fair or market:

Ingroſſing is from *in*, and *groſs*, great or whole:

And *regrating*, from *re*, again, and the French *grater*, to *grate* or ſcrape; and ſignifieth the ſcraping or dreſſing of cloth or other goods, in order for ſelling the ſame again.

There have been ſeveral ſtatutes made from time to time againſt theſe offences in general, and alſo ſpecially with reſpect to particular ſpecies of goods according to their

ſeveral circumſtances; all of which from the 5 & 6 *Ed.* 6. *c.* 14. and others downwards made for inforcing the ſame, are repealed by the 12 *G.* 3. *c.* 71. But theſe offences ſtill continue puniſhable upon indictment at the common law by fine and impriſoment.

And at the common law, all endeavours whatſoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by ſpreading falſe rumours, or by buying things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame market, or by any other ſuch like devices, are highly criminal, and puniſhable by fine and impriſonment. 1 *Haw.* 234, 5.

By the common law, a merchant bringing victuals into the realm, may ſell the ſame in groſs; but no perſon can lawfully buy within the realm any merchandize in groſs, and ſell the ſame in groſs again, without being liable to be indicted for the ſame. 3 *Inſt.* 196.

And the bare ingroſſing of a whole commodity, with an intent to ſell it at an unreaſonable price, is an offence indictable at common law, whether any part thereof be ſold by the ingroſſer or not. 1 *Haw.* 235.

And ſo jealous is the common law of all practices of this kind, that it will not ſuffer corn to be ſold in the ſheaf; perhaps for this reaſon, becauſe by ſuch means the market is in effect foreſtalled. 1 *Haw.* 235.

By the ſtatute of the 5 & 6 *Ed.* 6. *c.* 14. theſe offences were particularly deſcribed; which ſtatute, altho' now repealed as aforeſaid, yet may be of uſe as containing a parliamentary expoſition of the reſpective terms denoting the ſeveral particular offences: And is as follows;

Whoſoever ſhall buy or cauſe to be bought, any merchandize, victual, or any other thing whatſoever, coming by land or by water toward any market or fair, to be ſold in the ſame, or coming toward any city, port, haven, creek, or road, from any parts beyond the ſea to be ſold; or make any bargain, contract or promiſe, for the having or buying the ſame, or any part thereof ſo coming as is aforeſaid, before the ſaid merchandize, victuals, or other things ſhall be in the market, fair, city, port, haven, creek or road, ready to be ſold; or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon for the inhancing of the price, or dearer ſelling of any thing abovementioned; or elſe diſſuade, move, or ſtir any perſon coming to the market or fair, to abſtain or forbear to bring or convey any of the things above rehearſed, to any

market, fair, city, port, haven, creek, or road to be ſold, as aforeſaid,——ſhall be deemed a foreſtaller:

Whoſoever ſhall ingroſs, or get into his hands by buying, contracting, or promiſe-taking, other than by demiſe, grant, or leaſe of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victuals whatſoever, to the intent to ſell the ſame again, ſhall be deemed an unlawful ingroſſer:

And whoſoever ſhall by any means regrate, obtain, or get into his hands or poſſeſſion, in a fair or market, any corn, wine, fiſh, butter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine, pigs, geeſe, capons, hens, chickens, pigeons, conies, or other dead victual whatſoever, that ſhall be brought to any fair or market to be ſold, and do ſell the ſame again in any fair or market holden or kept in the ſame place, or in any other fair or market within four miles thereof, ſhall be deemed a regrater.

Form of an Indictment for foreſtalling.

Weſtmorland. THE *jurors for our lord the king, upon their oath preſent, that* A. O. *late of ——— in the county aforeſaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— at ——— aforeſaid, in the county aforeſaid, did buy and cauſe to be bought of and from one* A. S. *twenty oxen, for the ſum of* 200 l *of lawful money of* Great Britain, *as he the ſaid* A. S. *then and there was driving the ſaid twenty oxen towards the market of* M. *to ſell the ſaid twenty oxen in the ſaid market, and before the ſaid twenty oxen were brought into the ſaid market, where the ſame ſhould be ſold; in contempt of our ſaid lord the king and his laws; to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for ingroſſing.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of ——— in the county aforeſaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— at ——— aforeſaid, in the county aforeſaid, did ingroſs and get into his hands, by buying of and from one* A. S. 50 *quarters of wheat, to the intent to ſell the ſame again; to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

In-

Indictment for regrating.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——*in the county aforeſaid, yeoman, on the*———*day of* ——*in the*———*year of the reign of*———*at*——— *aforeſaid, in the county aforeſaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands and poſſeſſion ten geeſe and twenty chickens, of and from one* A. S. *for the ſum of* 30 s *of lawful money of* Great Britain (*the ſaid geeſe and chickens then being brought to the ſaid market by the ſaid* A. S. *to be ſold*); *and that afterwards, to wit, on the ſame*———*day of*———*in the year aforeſaid, he the ſaid* A. O. *at*———*aforeſaid, in the county aforeſaid, in the ſaid market there, unlawfully did regrate the ſaid geeſe and chickens, and ſell the ſame again to one* A. B. *for the ſum of* 40 s *of like lawful money of* Great Britain, *in contempt of our ſaid lord the king and his laws, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Foreſts. See **Game.**

Forfeiture.

The forfeitures for particular offences may be found under their reſpective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.
II. Of loſs of dower.
III. Of corruption of blood.

I. Of forfeiture of lands and goods.

Forfeiture of lands.

1. IT ſeems agreed, that by the common law, all lands of inheritance, whereof the offender was ſeiſed in his own right, and alſo all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treaſon, and to the lord of whom they are immediately holden, by an attainder of petit treaſon or felony. 2 *Haw.* 448.

But it ſeems clear, that the lord cannot enter into the lands holden of him, upon an eſcheat for petit treaſon or felony, without a ſpecial grant, till it appear by due proceſs, that the king hath had his prerogative of the year, day, and waſte. 2 *Haw.* 448.

Concerning which year, day, and waſte, it is enacted by the 17 *Ed.* 2. *c.* 16, that the king ſhall have the goods of all felons attainted, and fugitives, whereſoever they be found. And if they have freehold, it ſhall be forthwith taken into the king's hands, and the king ſhall have all profits of the ſame by one year and one day; and the land ſhall be waſted and deſtroyed in the houſes, woods, and gardens, and in all manner of things, belonging to the ſame land. And after the king hath had the year, day, and waſte, the land ſhall be reſtored to the chief lord of the fee, unleſs that he fine before with the king, for the year, day, and waſte.

Forfeiture of goods.

2. As to forfeiture of goods, it ſeems agreed, that all things whatſoever, which are comprehended under the notion of a perſonal eſtate, whether they be in action or poſſeſſion, which the party hath, or is intitled to, in his own right, and not as executor or adminiſtrator to another, are liable to ſuch forfeiture, in the following caſes:

(1) Upon a conviction of treaſon or felony. 2 *Haw.* 450.

(2) Upon a flight found before the coroner, on view of a dead body. *id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *id.*

(4) Alſo a perſon indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in caſe of grand larceny. 1 *H. H.* 530. 2 *Haw.* 451.

But it is certain that the party may in all caſes, except that of the coroner's inqueſt, traverſe the finding of the flight. Alſo it ſeems agreed, that the particulars of the goods found to be forfeited may be alſo traverſed. 2 *Haw.* 451.

(5) Upon a preſentment by the oaths of 12 men that a perſon arreſted for treaſon or felony, fled from, or reſiſted thoſe who had him in cuſtody, and was killed by them in the purſuit or ſcuffle. 2 *Haw.* 451.

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods ſo waived, whether they be his own, or the goods of others ſtolen by him, which ſhall not be reſtored to the right owners but upon a proper proſecution. 2 *Haw.* 451.

(7) Alſo,

(7) Alſo, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchaſing other goods. 2 *H. H.* 388, 389.

But on burning in the hand, he ought to be immediately reſtored to the poſſeſſion of his lands. 2 *H. H.* 389.

3. Upon outlawry in treaſon or felony, the offender ſhall loſe and forfeit as much as if he had appeared, and judgment had been given againſt him, as long as the outlawry is in force. *Wood. b.* 4. *c.* 5. Forfeiture upon outlawry.

And thoſe that tarry till the exigent, in treaſon, felony, or petit larceny, forfeit their goods, though they render themſelves to juſtice, and are acquitted; for it was a flight in law. *Wood. b.* 4. *c.* 5.

4. But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unleſs he fled; for that is a diſtinct forfeiture, although the party be not guilty of the fact. 1 *H. H.* 493. Forfeiture in ſe defendendo.

5. It ſeems agreed, that the forfeiture, upon an attainder either of treaſon or felony, ſhall have relation to the time of the offence, for the avoiding of all ſubſequent alienations of the *land*; but to the time of the conviction or flight found only, as to *chattels*; unleſs the party were killed in flying or reſiſting, in which caſe it is ſaid, that the forfeiture of the chattels ſhall relate to the time of the offence. 2 *Haw.* 454. To what time the forfeiture ſhall relate.

6. But though the goods of an offender be not forfeited, till the conviction, or flight found by inqueſt, yet whether they may be ſeized upon the offence committed, hath been controverted; concerning which Lord *Hale* ſaith thus: What is to be done with the felon's goods before forfeiture

It ſeemeth clear, that at the common law, if a man had committed felony or treaſon, or tho' poſſibly he had committed none, yet if he had been indicted, the ſheriff, coroner, or other officer, could not ſeize and carry away the goods of the offender or party accuſed:

Again, he could not in that caſe have removed the goods out of the cuſtody of the offender or party accuſed, and deliver them over to the conſtables or to the *villata*, to anſwer for them:

But if the party were indicted, the ſheriff or other officer might make a ſimple ſeizure of them only to inventory and appraiſe them, and leave them to the cuſtody of the ſervants or bailiff of the party indicted, in caſe he would give ſecurity againſt their being embezilled, or in default thereof he might deliver them to the conſtable or vill to be anſwerable for them, but yet ſo that the party accuſed and his family have ſufficient out of them for their livelihood and maintenance:

And

And poſſibly the ſame law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of ſeizure might have been made, whether he committed the felony or not:

But in caſe there were no indictment, then it is at the peril of him that ſeizeth, if he committed not the felony:

And then as to the ſtatute of 1 *R.* 3. *c.* 3. it is as follows; *No ſheriff or other perſon ſhall take or ſeize the goods of any perſon arreſted or impriſoned for ſuſpicion of felony, before he be convicted or attainted, or before the goods be otherwiſe forfeited; on pain of double value to the party grieved:*

Mr. *Stamford* thinks this is but in affirmance of the common law, only that it gives a penalty; but it ſeems to be ſomewhat more than ſo, for this prohibits the ſeizure of the goods of a party impriſoned, tho' he were alſo indicted, but not yet convicted, where unqueſtionably the common law allowed ſuch a ſeizure, if the party or his friends did not ſecure the forthcoming of the goods, where the party was indicted:

But upon this ſtatute theſe things are conſiderable; 1. As to perſons at large, it ſeems to me (ſays he) that if they fly not, there can be no ſeizure at all made, whether they are indicted or not; for the ſtatute did not intend a greater privilege to a party impriſoned, than to him that is at large. 2. That if he be at large, and *fly* for it, yet his goods cannot be ſeized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraiſed, and inventoried, in the houſe or place where they lie:

And yet I know not how it comes to paſs, ſays he, the uſe of ſeizing the goods of perſons accuſed of felony, tho' impriſoned or not impriſoned, hath ſo far obtained notwithſtanding this ſtatute, that it paſſeth for law and common practice, as well by conſtables, ſheriffs, and other the king's officers, as by lords of franchiſes, that there is nothing more uſual:

Upon the whole, he ſays, that the opinion of my lord *Coke*, in his 3 *Inſt.* 228. hath truly ſtated the law, at leaſt as it ſtands upon the ſtatute of 1 *R.* 3. *viz.* 1. That *before* the indictment, the goods of any perſon cannot be ſearched, inventoried, or in any ſort ſeized. 2. That *after* the indictment, they cannot be ſeized and removed, or taken away, before conviction or attainder:

But then it may be ſaid, to what purpoſe may they be ſearched and inventoried after indictment, if they may not be

be removed, but are equally liable to embezilling as before:

I think (he ſays) he is not bound to find ſureties, neither hath the officer at this day any power to remove them in default of ſureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unleſs in caſe of a ſecond *capias* on the 25 *Ed.* 3. *c.* 14.) for the priſoner or party indicted may ſell them *bona fide*; and if he may do ſo, the vendee may take them, and the *villata* cannot refuſe the delivering of them to the vendee, tho' the goods had been delivered to them:

But there is this advantage by the viewing and appraiſing, that thereby the king is aſcertained what the goods are, and may purſue them that take or embezil them, by information (if the party happen to be convict) and try the property with them, whether they are really ſold, or ſold only fraudulently without valuable conſideration, to prevent the forfeiture. 1 *H. H.* 363, 4, 5, 6, 7.

II. Of loſs of dower.

Forfeiture of dower in felony.

1. Albeit a perſon ſhall be attainted of felony, yet his wife ſhall not forfeit her dower. 1 *Ed.* 6. *c.* 12. *ſ.* 17.

In treaſon.

2. But on his attainder of treaſon, ſhe ſhall forfeit her dower. 5 & 6 *Ed.* 6. *c.* 11. *ſ.* 13. But in ſome kinds of treaſon (particularly with regard to the coin) there is a ſpecial ſaving of the wife's dower by ſtatute.

III. Of corruption of blood.

Corruption of blood.

1. It is agreed, that by an attainder of treaſon or felony, the blood is ſo far ſtained or corrupted, that the party loſes all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* 456.

2. Alſo, that he can neither inherit as heir to an anceſtor, nor have an heir. 2 *Haw.* 456.

3. But the king's pardon, tho' it doth not reſtore the blood, yet as to iſſues born after, hath the effect of a reſtitution. 1 *H. H.* 358.

4. But reſtitution of blood in its true nature and extent, can only be by act of parliament. 1 *H. H.* 358. 2 *Haw.* 458.

Forgery.

1. FORGERY is an offence at common law, and an offence alſo by ſtatute.

2. For-

2. Forgery at the common law, is an offence in falſly and fraudulently making or altering any manner of record, or any other authentic matter of a publick nature; as a pariſh regiſter, or any deed, will, privy ſeal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw.* 182, 184.

As for writings of an inferior nature, as private letters, and ſuch like, the counterfeiting of them is not properly forgery; therefore in ſome caſes it may be more ſafe to proſecute ſuch offenders for a miſdemeanor, as cheats. For by reaſon of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon ſome of the following ſtatutes, and very few at common law. But if the indictment is at common law and the offender is convicted, he may be pilloried, fined, and impriſoned. *Wood. b.* 3. *c.* 3. 1 *Haw.* 184.

But as to the power of juſtices of the peace in this matter, Mr. *Hawkins* ſays, it hath been ſettled of late, that they have no juriſdiction over forgery at the common law; the principal reaſon of which reſolution (he ſays) as he apprehended, was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was for the preſervation of the peace againſt perſonal wrongs and open violence, and the word *treſpaſs* in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the commiſſion, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40. 1 *Salk.* 406.

But Mr. *Barlow* ſays nevertheleſs, that it ſeemeth clear, that a juſtice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to priſon in order to abide his trial. *Barl.* 244.

3. The ſtatutes that make forgery an offence are theſe that follow:

The firſt is that famous ſtatute of the 5 *El. c.* 14: which by an example worthy to be imitated, doth (in order to prevent confuſion) repeal all former ſtatutes againſt forgery. By this it is enacted, that *if any perſon upon his own head and imagination, or by falſe conſpiracy and fraud with others, ſhall wittingly, ſubtilly, and falſely forge or make, or ſubtilly cauſe, or wittingly aſſent to be forged or made, any falſe deed, charter, or writing ſealed, court roll, or the will of any perſon in writing, to the intent that the eſtate of freehold, or inherit-*

ance

ance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame may be moleſted, troubled, defeated, recovered, or charged; or ſhall pronounce, publiſh, or ſhew forth in evidence the ſame as true, knowing the ſame to be falſe and forged, to the intent as above (except lawyers or attorneys for their clients, not being privy to the forgery); and ſhall be thereof convicted, either upon action at the ſuit of the party, or otherwiſe according to the order and due courſe of the laws of the realm,——— he ſhall pay to the party double coſts and damages, and be ſet upon the pillory in ſome open market town or other open place, and have both his ears cut off, and his noſtrils ſlit and ſeared with a hot iron, and ſhall forfeit the profits of his lands during life, and be impriſoned alſo during life. ſ. 2.

And all juſtices of oyer and terminer, and juſtices of aſſize, ſhall have power to inquire of, hear, and determine all offences in this act. ſ. 10.

Upon his own head] When the proceedings were in latin, *ſuper proprium ſuum caput* was allowed to be good upon an indictment on this ſtatute; the law having more regard that the ſtatute be ſtrictly purſued, than rendred into proper latin. 1 *Haw.* 187.

Forge or make] Making a ſecond deed, and antedating it, with intent to make it take place of a former deed, is forgery within this ſtatute. 3 *Inſt.* 167.

Or ſubtilly cauſe, or willing aſſent] To *cauſe*, is to procure or counſel one to forge; to *aſſent*, is to give his aſſent or agreement afterwards, to the procurement or counſel of another; to *conſent*, is to agree at the time of the procurement or counſel, and ſuch is in law a procurer. 3 *Inſt.* 169.

But lord *Hale* ſays, that an *aſſent* after the fact is committed, makes not the party aſſenting guilty or principal in the forging; but it muſt be a precedent, or concomitant aſſent. 1 *H. H.* 684.

Falſe deed, charter, or writing] It ſeems to be no way material, whether a forged inſtrument be made in ſuch a manner, that if it were in truth ſuch as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 *Haw.* 184.

Writing ſealed] Theſe are large words; and the making of a falſe cuſtomary of a manor in writing under ſeal, con-

containing divers falſe cuſtoms, to the diſheriſon of the lord of the manor, and that the ſame had been allowed and permitted by the lord of the manor, which was alſo falſe, was reſolved to be within theſe words *a falſe writing ſealed.* 3 Inſt. 171.

Sealed] It is required that the deed, charter, or writing muſt be ſealed, that is, have ſome impreſſion upon the wax; for wax, without an impreſſion is not a ſeal. 3 *Inſt.* 169.

Court roll, or will] Here are two writings which need not to be ſealed, becauſe they may take effect without any ſeal, for that they be no deeds; and no writing can have the force of a deed without a ſeal. 3 *Inſt.* 170.

Will] If any perſon which writeth the will of a ſick man, inſerteth a clauſe therein concerning the deviſe of lands, without any direction of the deviſor, this is forgery, although he did not forge the whole will. 3 *Inſt.* 170.

To the intent that the eſtate of freehold or inheritance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame may be moleſted, troubled, defeated, recovered, or charged] *E.* 4 *G.* 2. *K. and Japhet Crooke.* The defendant was convicted on this ſtatute for forging a leaſe and releaſe. And the indictment ſets forth, that *Garbut* and his wife were ſeiſed in fee of certain meſſuages, lands, and tenements called *Jawick* in the pariſh of *Clackton* in *Eſſex*, and that the defendant intending to moleſt them and their intereſt in the premiſes, forged a leaſe and releaſe as from *Garbut* and his wife, whereby they are ſuppoſed for a valuable conſideration to convey to him "all that park "called *Jawick* park in the pariſh of *Clackton* in *Eſſex*, "containing eight miles in circumference, with all the "deer, woods, *&c.* thereto belonging." It was moved in arreſt of judgment, that the premiſes ſuppoſed to be conveyed, were ſo materially different from thoſe which were really the eſtate of *Garbut* and his wife, which were houſes, lands, and tenements; that it was impoſſible this conveyance ever could moleſt or diſturb them: if it was a true deed, it could not paſs their lands at law, for want of a proper deſcription; and though where lands are improperly deſcribed, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a ſale, and they do it as carrying that contract into execution. The court for ſeveral terms inclined ſtrongly with the objection; but this

this term *Raymond* Ch. J. declared that they were all of opinion to over-rule it: for by the words of the act, it is not neceſſary that there ſhould be a charge or a poſſibility of a charge: It is ſufficient that it be done with that intent, and the jury have found that it was done with intent to moleſt *Garbut* and his wife in the poſſeſſion of their lands. Accordingly judgment was given for the king, and the defendant had ſentence to undergo the puniſhment appointed by the act for forging a deed, and the ſame was executed upon him at charing-croſs. *Str.* 901.

Pronounce or publiſh] That is, when one by words or writing pronounceth or publiſheth the deed to any other as true. 3 *Inſt.* 171.

Knowing the ſame to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publiſh it afterwards as true, and it prove to be forged indeed, he is in danger of this ſtatute. 3 *Inſt.* 171. 1 *Haw.* 187.

But lord *Hale* ſays, that tho' ſuch a relation may be an evidence of fact to prove his knowledge, yet it is not concluſive; for perchance there might be circumſtances of fact, that might make the perſon relating it, or his relation, not credible: ſo that the *knowing* muſt be upon the whole matter left to the jury, upon the circumſtances of the caſe. 1 *H. H.* 685.

Juſtices of oyer and terminer] Albeit juſtices of the peace, by their commiſſion, have power to hear and determine felonies and treſpaſſes, yet they are not included under the name of juſtices of oyer and terminer; for juſtices of oyer and terminer are known by one diſtinct name, and juſtices of the peace by another. 3 *Inſt.* 103.

And by the ſame ſtatute it is further enacted, that *if any perſon, upon his own head or imagination, or by falſe conſpiration or fraud with any other, ſhall wittingly, ſubtilly, and falſly forge or make, or cauſe or aſſent to be made and forged any falſe charter, deed or writing, to the intent that any perſon may have or claim any eſtate or intereſt for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee-ſimple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, releaſe, or other diſcharge of any debt, account, action, ſuit, demand, or other thing perſonal; or ſhall pronounce, publiſh, or give the ſame in evidence as true, knowing the ſame to be falſe and forged; he ſhall, on conviction in like manner, pay to the party double coſts and damages, and be*

ſet on the pillory, and have one of his ears cut off, and be imprisoned for a year. ſ. 3.

Obligation or bill obligatory] The forgery of a deed of gift of mere perſonal chattels, is not within this ſtatute. 1 *Haw.* 186.

And *if after verdict, the plaintiff ſhall releaſe the judgment or execution, or ſuffer a diſcontinuance, it ſhall only diſcharge his own coſts and damages, and not the other puniſhment.* ſ. 6.

And by the ſame ſtatute it is further enacted, that *if any perſon ſhall after conviction offend again in any of the ways abovementioned, he ſhall be guilty of felony without benefit of clergy.* ſ. 7, 8.

4. Thus ſtood the matter upon the ſtatute of 5 *El.* Afterwards by many ſubſequent ſtatutes (ſeveral of which were occaſional only, and adapted to the particular juncture and circumſtances of the time in which they were made, but which are referred to and inforced by the ſubſequent ſtatutes on the ſame ſubject) divers other forgeries were made felony without benefit of clergy for the firſt offence; and others had other puniſhments aſſigned them. Such are theſe that follow:

It ſhall be felony without benefit of clergy, to forge or counterfeit,

(1) Any bank bills, or notes, or the ſeal of the governor and company of the bank of *England.* 7 & 8 *W.* *c.* 31. *ſ.* 36. 8 & 9 *W.* *c.* 20. *ſ.* 36. 1: *G.* *c.* 9. *ſ.* 6. 12 *G.* *c.* 32. *ſ.* 9.

And in general, any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the ſeal of the bank, or indorſement thereon; or knowingly offering to diſpoſe thereof. 15 *G.* 2. *c.* 13. *ſ.* 12.

(2) *India* bonds. 12 *G.* *c.* 32. *ſ.* 9.

(3) Bonds, receipts, warrants, or ſeal of the ſouth-ſea company. 9 *An.* *c.* 21. *ſ.* 57. 6 *G.* *c.* 4. *ſ.* 56. 6 *G.* *c.* 11. *ſ.* 50. 12 *G.* *c.* 32. *ſ.* 9.

(4) Exchequer bills; by the ſeveral acts which direct the iſſuing the ſame.

(5) Any power to transfer ſtocks. 8 *G.* *c.* 22. *ſ.* 1. or perſonating the owners thereof. 4 *G.* 3. *c.* 25.

(6) Lottery tickets and orders: by the ſeveral lottery acts.

(7) Policy of aſſurance. 6 *G.* *c.* 18. *ſ.* 13.

(8) Mediterranean paſſes. 4 *G.* 2. *c.* 18.

(9) Army debentures. 5 *G.* *c.* 14. *ſ.* 10.

(10) Marriage licence or regiſtry of a marriage. 26 *G.* 2. *c.* 33.

(11) Stamps on vellum, parchment, and paper, by the ſeveral ſtamp acts.

(12) Stamps

(12) Stamps on linen imported. 10 *An. c.* 19. *ſ.* 97.

5. And beſides theſe (and other like) particular laws, in the 2 *G.* 2. a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that *if any perſon ſhall falſly make, forge, or counterfeit, or cauſe or procure the ſame to be done, or willingly aid or aſſiſt in the falſe making, forging, or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promiſſory note, indorſement or aſſignment of any bill of exchange or promiſſory note, acquittance or receipt for money or goods, with intent to defraud any perſon; or ſhall utter or publiſh the ſame as true, knowing the ſame to be forged;——he ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood or diſheriſon of heirs.* 2 G. 2. c. 25. ſ. 1, 5.

6. And by the 7 *G.* 2. *c.* 22. and 18 *G.* 3. *c.* 18. It is further enacted, by way of addition to the foregoing, that *if any perſon ſhall falſly make, alter, forge, or counterfeit, or willingly act or aſſiſt in the falſe making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal ſum of any accountable receipt for any note, bill, or other ſecurity for payment of money, or any warrant or order for payment of money, or delivery of goods, with intent to defraud any perſon or corporation; or ſhall utter or publiſh the ſame as true, with intent to defraud any perſon or corporation, knowing the ſame to be falſe;—— he ſhall be guilty of felony without benefit of clergy:* And this without any ſaving of the corruption of blood, or diſheriſon of heirs.

Warrant or order for payment of money or delivery of goods.] In the caſe of *Mary Mitchell*, on this order,

"Mr. Jefferys, Oct. 16. 1753.

"I deſire you to let this woman have ſix yards of ordi-
"nary ſtuff, one pair of ſtockings, one ſhift, one apron,
"one handkerchief, and I will ſee it all paid for. Wit-
"neſs my hand, *George May.*"

Upon a conference among the judges, nine of them were of opinion, that this writing is not a warrant or order for the delivery of goods within the meaning of the act: That the words *warrant* or *order* do import, that the perſon giving ſuch warrant or order hath or at leaſt claimeth an intereſt in the money or goods which are the ſubject matter of that warrant or order; that he hath or at leaſt aſſumeth a diſpoſing power over ſuch money or goods; and taketh on him to transfer the property, or cuſtody of them at leaſt, to the perſon in whoſe favour ſuch warrant or order

is made: And tho' the preſent caſe, and many others of the like kind, may come within the miſchiefs intended to be prevented by the act, yet in the conſtruction of acts ſo penal as this, the old rule of adhering ſtrictly to the letter muſt not be departed from. And the priſoner was diſcharged from the indictment which was brought againſt her for forging this order. *Foſt.* 119.

ation. See Lewdneſs.

Frame work knitters.

1. ALL frame work knitted pieces and ſtockings, made of thread, cotton, worſted, or yarn, or of any mixture therewith, or of any other materials (except ſuch as ſhall be made of ſilk only), which ſhall contain 3 or more threads, ſhall be marked with the ſame number of ilet-holes, and no more, as there are threads contained in each piece or pair; and ſuch ilet-holes ſhall be made diſtinctly in one direct line, or in the ſame courſe, and ſhall not exceed the diſtance of three inches from the two extreme ilet-holes; and no ſuch ilet-holes ſhall be made within the diſtance of 4 inches of any letter, figure, mark, or other device, which ſhall be put or woven in any ſuch goods or manufactures; and all ſuch ilet-holes ſhall be made within 4 inches of the top or end of every ſuch piece or pair; and no ilet-hole, or imitation thereof, ſhall be made in any frame work knitted piece or pair of ſtockings, upon any account whatſoever, except as herein before directed. 6 *G.* 3. *c.* 29. *ſ.* 1.

Provided, that nothing herein ſhall extend to prevent any manufacturers from uſing remnants, or materials of any ſort, in the welt and tops of ſtockings only, at any diſtance not exceeding 3 inches from the top, altho' the ſame ſhall not contain ſo great a number of threads as are contained in the legs of ſuch ſtockings. *ſ.* 2.

2. And if any maſter frame work knitter, or maſter hoſier, or any other perſon, ſhall make or work, or cauſe or procure to be made or wrought, any frame work knitted goods, of any the materials aforeſaid or any mixture thereof (except ſuch as ſhall be made of ſilk only), without being ſo marked; he ſhall forfeit the ſame, and alſo 5 l for each piece or pair of ſtockings. *ſ.* 3.

Provided, that the ſaid penalty of 5 l ſhall not extend to any journeyman, apprentice, ſervant, or perſon not making

ing ſuch goods on his own account: But ſuch perſon offending herein ſhall forfeit not exceeding 40 s, nor leſs than 5 s; unleſs he can prove that the goods by him unduly marked were ſo marked by direction of his maſter or perſon by whom he was employed, in which caſe he ſhall not be ſubject to any penalty, *ſ.* 4, 5, 6.

3. And if any frame work knitter, hoſier, or other perſon, ſhall ſell or expoſe to ſale, any of the ſaid goods, not ſo marked as aforeſaid; he ſhall forfeit the ſame, and alſo 5 l for each piece or pair. *ſ.* 7.

Provided, that if the perſon ſelling or expoſing the ſame to ſale, ſhall diſcover the vender or ſeller thereof, ſo as he may be convicted; ſuch perſon ſhall be diſcharged. *ſ.* 8.

4. And one juſtice where the offence ſhall be committed (not being a frame work knitter, hoſier, or proprietor of frames) may convict the offender, on the oath of one witneſs: And if the penalties or forfeitures ſhall not be forthwith paid, the ſaid juſtice ſhall iſſue his warrant to levy the ſame by diſtreſs; and if no goods, or not ſufficient, can be found, ſuch juſtice ſhall, on oath made to him by the perſon who ſhall have the execution of the warrant, commit the offender to the common gaol of the place where the offence was committed, for any time not exceeding 3 months, unleſs the penalties and forfeitures ſhall be ſooner paid and ſatisfied. All which penalties and forfeitures ſhall be applied, half to the informer, and half to the poor. *ſ.* 9.

5. Perſons aggrieved may appeal to the ſeſſions, giving ten days notice to the juſtice; and within 2 days after notice, entring into recognizance before a juſtice, with two ſureties, to try the appeal at ſuch ſeſſions: And the juſtices there, on due proof of ſuch notice and recognizance, ſhall hear and determine the ſame, and may award coſts to either party; and their determination ſhall be final, binding, and concluſive, to all intents and purpoſes. *ſ.* 10.

6. Provided, that nothing herein ſhall extend to abridge or take away any rights or privileges, of the maſter, wardens, and aſſiſtants, of the company of frame work knitters. *ſ.* 12.

Fraud. See **Cheat.**
Fruit and fruit trees. See **Wood.**

Fuel.

BY the 43 *El.* *c.* 14. All faggots to be ſold ſhall contain in compaſs, beſides the knot of the bond, 24 inches of aſſize; and every faggot ſtick within the bond, ſhall contain full three foot of aſſize, except only one ſtick to be but one foot long, to ſtop or harden the binding.

By the 9 *An.* *c.* 15. *ſ.* 1. All billets (except thoſe made of beech, 10 *An.* *c.* 6.) that lie expoſed in publick places where they are uſually bought or ſold, ſhall be aſſized, and cut or marked in manner following; that is to ſay,

All billets of what ſcantling or denomination ſoever, ſhall contain in length three foot and four inches, and be of the following dimenſions, *viz.*

Names of the billets.	Rounc		Half round		Quarter cleft		
	in.	qr.	in.	qr.	in.	qr.	
A ſingle	72		0	0	0	0	No notch.
A caſt	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle.
2 caſt	15	0	17	1	17	0	Two notches.
3 caſt	18	1	21	1	21	0	One at each end, and one in the middle.
4 caſt	21	1	24	2	24	0	4 notches.
5 caſt	23	3	27	2	27	0	5 notches.
6 caſt	26	0	30	0	29	2	6 notches.
7 caſt	28	0	32	2	32	0	7 notches.
8 caſt	30	0	34	3	34	0	8 notches.
9 caſt	31	3	36	3	36	1	9 notches.
10 caſt	33	2	38	3	38	0	10 notches.
11 caſt	35	1	——		——		11 notches.
12 caſt	36	3	——		——		12 notches.
13 caſt	38	1	——		——		13 notches.
14 caſt	39	3	——		——		14 notches.
15 caſt	41	0	——		——		15 notches.
16 caſt	42	2	——		——		16 notches.
17 caſt	43	3	——		——		17 notches.
18 caſt	45	0	——		——		18 notches.
19 caſt	46	1	——		——		19 notches.
20 caſt	47	2	——		——		20 notches.

And if they ſhall not be thus aſſized and marked, then on information to a juſtice of the peace, mayor, or other head officer, he ſhall call before him ſix good and lawful men of the town, and ſhall ſwear them truly to inquire and preſent, whether the ſame be of good and ſufficient aſſize; and if they ſhall preſent that any of them is not ſufficient, the ſame ſo being deficient ſhall be forfeited, and be delivered to the overſeers, to be by them diſtributed to the poor. *id. ſ.* 2.

And by the 43 *El. c.* 14. The billets ſhall be meaſured within ſix inches of the midſt; and the ſurpluſage which ſhall happen between any two next meaſures, being above the one, and under the other, ſhall be taken for the benefit of the buyer.

Fuller's earth. See **Woollen manufacture.**

Furze: Burning it in foreſts. See **Burning.**

Game.

THE ſtatutes relating to this title are very numerous, and the ſenſe ſometimes a little perplexed, ſo that perhaps upon a view of the whole, it may ſeem, that about four or five new acts, comprehending the ſeveral heads here undermentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and uſeful.

After having firſt premiſed (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the ſtatute of 8 *G. c.* 19. that where any perſon for any offence againſt any law in being at the making of the ſaid act, for the better preſervation of the game, ſhall be liable to pay any pecuniary penalty or ſum of money, on conviction before a juſtice of the peace, the proſecutor may either proceed to recover the ſame in ſuch manner, or he may ſue for the ſame (before the end of the ſecond term after the offence committed, 26 *G.* 2. *c.* 2.) by action of debt, or on the caſe, bill, plaint, or information, in any court of record at *Weſtminſter*, wherein if he recovers he ſhall have double coſts: Provided, that the offender ſhall not be proſecuted both ways; and in caſe of a ſecond proſecution, he may plead in his defence the former proſecution pending, or the conviction or judgment thereupon had. And by the 2 *G.* 3. *c.* 19. whereas

a moiety of the ſaid penalty by ſeveral acts is directed to be applied to the uſe of the poor of the pariſh where the offence was committed, by reaſon whereof inhabitants of the ſaid pariſh have been diſallowed to give evidence; it is enacted, that it ſhall be lawful for any perſon to ſue for the whole of ſuch penalty to his own uſe, and if he recovers he ſhall have double coſts; ſuch action to be brought within ſix months after the offence committed: (This being premiſed) I will treat of this ſubject under the following heads:

I. Origin of the diſtinct property in game.
II. Certain obſervations concerning foreſts, chaſes, parks, and warrens.
III. Concerning gamekeepers.
IV. Qualification by eſtate or degree to kill game: with the puniſhment of perſons unqualified.
V. Laws for preſerving the four footed game in particular.
VI. Laws for preſerving the winged game in particular.
VII. Laws for preſerving the game of fiſh in particular.

Under which three laſt heads are comprehended thoſe reſtrictions which ſeem to concern all perſons whatſoever, whether qualified or not: for altho' a man be qualified to kill game, yet he muſt kill it in a lawful manner, and not in ſuch ways as tend utterly to deſtroy it.

I. Origin of the diſtinct property in game.

Before we take notice of the ſtatutes made for the preſervation of the game, it may be requiſite to obſerve how the common law ſtood herein; which depends upon the difference made between tame and wild animals.

The tame animals, ſuch as horſes, cows, ſheep, and the like, are ſuch creatures, as by reaſon of their ſluggiſhneſs and unaptneſs for motion, do not fly the dominion of mankind, but generally keep within the ſame paſtures and limits, and may be eaſily purſued and overtaken, if by accident they ſhould eſcape; and therefore the owner hath the ſame kind of property in them, as he hath in all inanimate

nimate chattels, and for the violation thereof may bring an action of treſpaſs.

The wild animals, ſuch as deer, hares, foxes, and ſuch like, are thoſe, which by reaſon of their ſwiftneſs or fierceneſs fly the dominion of man; and in theſe, no perſon can have a property, unleſs they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own uſe, and the ability that he hath to apply it to the ſuſtentation of his being; when that power ceaſeth, his property is loſt; and by conſequence an animal of this kind, which after any ſeizure eſcapes into the wild common of nature, and aſſerts its own liberty by its ſwiftneſs, is no more mine than any creature in the *Indies*, becauſe I have it no longer in my power or diſpoſal.

Hence it appears, that by the common law, every man had an equal right to ſuch creatures as were not naturally under the power of man; and that the mere caption or ſeizure created a property in them.

By immediate taking and killing them, they belong to ſuch perſon in the ſame manner as any other chattels, and cannot be taken from him; ſince the firſt ſeizure and caption was ſufficient to veſt the property of them in him.

Alſo by taking and taming them, they belong to the owner, as do the other tame animals, ſo long as they continue in this condition, that is, as long as they can be conſidered to have the mind of returning to their maſters; for while they appear to be in this ſtate, they are plainly the owner's, and ought not to be violated; but when they forſake the houſes and habitations of men, and betake themſelves to the woods, they are then the property of any man.

Another way of gaining property in them is, by incloſure; and then the beaſts muſt be underſtood to be mine, as the profits of the ſoil it ſelf are; and they can no more be taken and carried off, than any other profits of the land: and therefore if deer be incloſed in a park or paddock, or conies in a field or warren, they become ſo much a man's own, that no one ought to kill or take them away. And ſince in this caſe it is the incloſure that retains them (for take away the incloſure, and they are in their natural liberty); therefore the party is ſaid to have right as he hath to any other profits there incloſed, and a diſtinct and independent right in every animal.

It is a maxim of the common law, that ſuch goods of which no one can claim any property do belong to the king

king by his prerogative; and hence all thoſe animals *feræ naturæ*, which come under the denomination of *game*, are ſtyled in our laws his *majeſty*'s game: and that which he hath, he may grant to another; and conſequently another may preſcribe to have the ſame, within ſuch a precinct or lordſhip. And from hence cometh the right of lords of manors, or others, unto the game within their reſpective liberties.

And upon this foundation the ſeveral acts of parliament are eſtabliſhed, for the preſervation of theſe ſpecies of animals; for the recreation and amuſement of perſons of fortune, unto whom the king with the advice and aſſent of parliament hath granted the ſame; and to prevent perſons of inferior rank, from ſquandering that time, which their ſtation of life requireth to be more profitably employed. For theſe reſtrictions do not take from the common people any right which they ever had; but only grant unto ſome perſons thoſe privileges which before reſted ſolely in the king. 2 *Bac. Abr.* 612, 613.

II. Certain obſervations concerning foreſts, chaſes, parks, and warrens.

Foreſt, what.

1. A *foreſt* is a certain territory of woody grounds and fruitful paſtures, privileged for wild beaſts and fowls of foreſt, chaſe, and warren, to reſt and abide there in the ſafe protection of the king, for his delight and pleaſure: which territory of ground ſo privileged is meered and bounded with unremoveable marks, meers, and boundaries, either known by matter of record, or by preſcription; and alſo repleniſhed with wild beaſts of venary or chaſe, and with great coverts of vert for the ſuccour of the ſaid beaſts there to abide: for the preſervation and continuance of which, there are particular officers, laws, and privileges belonging to the ſame, requiſite for that purpoſe, and proper only to a foreſt, and to no other place. *Manw.* 40.

Note; That *vert* comprehends every thing which bears green leaves in the foreſt. *Manw.* 51.

And the lord having the wood in the tenant's land, which is ſtill cuſtomary in many manors, was originally for preſervation of the vert, for the ſuſtentation of the lord's game there.

Beaſts of foreſt.

2. Beaſts of foreſt are properly hart, hind, buck, hare, boar and wolf; but legally all wild beaſts of venary. 1 *Inſt.* 233.

3. *Pur-*

3. *Purlieu* comes from the French, *pur*, clear, entire, and exempt; and *lieu*, a place: that is, a place, entire, clear, or exempt from the foreſt: and ſignifies thoſe grounds which *Henry* the ſecond, *Richard* the firſt, or king *John* added to their ancient foreſts, over other men's grounds; and were diſafforeſted by the ſtatute of *charta de foreſta*. 4 Inſt. 303. Manw. 318. Purlieu, what.

But nevertheleſs the *purlieu* as to ſome purpoſes is foreſt ſtill, and is diſafforeſted as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beaſts, and ſpoil the vert. And if thoſe beaſts do eſcape out of the foreſt into the *purlieu*, the king hath a property in them ſtill againſt any man, but againſt the owners of the woods and lands in which they are; and ſuch owners have a ſpecial property in them *ratione loci*, but yet ſo that they hunt them fairly, and not foreſtall them in their return towards the foreſt. *Manw.* 366.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beaſt of the foreſt in his woods or lands in the *purlieu*, in ſuch caſe he hath a property in them againſt any other man *ratione ſoli* (the king only excepted). And if he begins the hunting in his own lands, then by reaſon of that property he may purſue his hunting thro' any man's woods or lands, ſo as he doth not enter into any foreſt, chaſe, park, or warren. And if he kill the beaſt in another man's land, and out of ſuch privileged place, he may take and carry away the ſame by reaſon of the firſt property. But if the beaſt recover the foreſt, he muſt call back his dogs, for they are then the king's wild beaſts again. And if he do not call back and rebuke his dogs, and they kill the beaſts in the foreſt, he is a treſpaſſer, tho' himſelf never came within the bounds thereof. But if in hunting towards the foreſt, the dogs faſten on it before it is within the bounds thereof, and the dogs ſtill hanging on are drawn by the deer into the foreſt, and it is killed there, then by reaſon of the firſt property which he had *ratione ſoli*, and alſo by the purſuit and poſſeſſion thereof before it entred the foreſt, he may lawfully enter and take it. *Manw.* 373.

4. A *chaſe* (from *chaſſer*, to chaſe) is a privileged place for receipt of deer and beaſts of the foreſt, and is of a middle nature betwixt a foreſt and park. It is commonly leſs than a foreſt, and not endowed with ſo many liberties, as officers, laws, courts; and yet is of a larger compaſs than a park, having more officers and game than a park. Chaſe, what.

Every

Every foreſt is a chaſe, but every chaſe is not a foreſt. It differeth from a park in that it is not incloſed; for if it is incloſed, it is a good cauſe of forfeiture; tho' it muſt have certain metes and bouuds, but it may be in other men's grounds as well as in one's own. *Read.* Game. *Manw.* 49.

Beaſts of chaſe. 5. Beaſts of chaſe are the buck, doe, fox, martern and roe. *Manw.* 44.

Park, what. 6. A *park* (from the French, *parquer*, to incloſe) is a large parcel of ground privileged for wild beaſts of chaſe by the king's grant, or by preſcription. *Read.* Game.

Beaſts of park. 7. The beaſts of park properly extend to the buck, doe, fox; but in a common and legal ſenſe to all the beaſts of the foreſt. *Read.* Game.

Park to be incloſed. 8. A park muſt be incloſed; for if it lies open, it is a good cauſe of ſeizure into the king's hands, as a thing forfeited: and the owner cannot have an action againſt thoſe that hunt in his park, if it lies open. *Read.* Game.

Deer ſhall go to the heir. 9. Deer in a park ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Warren, what. 10. A *warren* is a place privileged by preſcription or grant of the king, for the preſervation of the beaſts and fowl of the warren; *viz.* hares, conies, partridges, and pheaſants. *Manw.* 44.

Need not to be incloſed. 11. A free warren may lie open, there being no neceſſity of incloſing it. *Read.* Game.

Conies ſhall go to the heir. 12. Conies in a warren (as hath been ſaid before of deer in the park) ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Licence to erect. 13. It is not lawful for any perſon to make any chaſe, park, or warren, in his own freehold or elſewhere, to keep in it any wild beaſts, or birds of foreſt, chaſe, park, or warren, without the king's grant or warrant ſo to do; and if any man do, he is to be puniſhed in a *Quo warranto*, and the franchiſe to be ſeized into the king's hands. *Manw.* 56.

M. 12 *G. K.* and *Sir William Lowther.* It was moved for leave to file an information in nature of a *quo warranto*, againſt *Sir William Lowther*, to ſhew by what authority he had made and ſet up a warren. But it was denied by the court; becauſe it was of a private nature, and therefore proper to be proſecuted only in the name of the attorney general by information, if his majeſty thought fit. And the like motion had been denied before in the caſe of the Lord *Liſburn.* L. Raym. 1409. Stra. 637.

Which of theſe is the higheſt franchiſe. 14. A foreſt is the higheſt franchiſe of princely pleaſure; the next to that is a free chaſe; a chaſe in one degree

gree

gree is the ſame as a park, only a park is incloſed, and a chaſe is always open; the next in degree to a free chaſe is a park; and next unto a park, is the franchiſe of a free warren. And a foreſt comprehends in it a chaſe, park, and warren. And for that cauſe, the beaſts of chaſe, and the beaſts and fowls of warren, are privileged within a foreſt, as well as the beaſts of the foreſt are. *Manw.* 52.

Common in a chaſe.

15. A perſon may have common in a chaſe, as well as in a foreſt; but a foreſt is governed by the foreſt law, and a chaſe and park by the common law. 4 *Inſt.* 314. *Manw.* 52.

Treſpaſs, in what caſe.

16. If I find a pheaſant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reaſon of the firſt property which I had in the pheaſant *ratione ſoli*; and if my hawk kill the pheaſant in another man's land, I may enter and take it, by reaſon of that property and purſuit; and in that caſe, I ſhall not be puniſhed as a treſpaſſer for taking and carrying away the pheaſant, but only for entring the ground. But if the pheaſant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer ſhall not have the pheaſant, but the owner of the warren. And the law is the ſame, in the caſes of all wild beaſts of the foreſt and chaſe. *Manw.* 389.

No treſpaſs in following beaſts of prey.

17. Notwithſtanding the common law allows of the hunting of foxes and badgers, being beaſts of prey, in another man's ground, becauſe the deſtroying of them is looked upon as a public benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of treſpaſs in that caſe. *Cro. Jac.* 321.

Game eſcaped out of the incloſure, may be retaken on freſh purſuit.

18. If conies are hunted out of the warren, or deer out of the park, and the warrener or parker purſue them, he may retake them; for the park or warren is an eſtabliſhment by the publick, to look after and preſerve the game; for all things unoccupied, in which no man hath a civil right, are under the regulation of the publick: now in parks and warrens, officers are eſtabliſhed by authority, to have an eye over the game, and to keep it within the boundaries; ſo that the property is not altered by driving it out of the incloſures, unleſs it be alſo out of the purſuit of the officers; for as long as he that is thus truſted doth purſue it, it is not in its natural liberty, but is ſtill belonging to the park or warren. 2 *Bac. Abr.* 613.

III. Con-

III. Concerning gamekeepers.

Who may appoint a gamekeeper.

1. All lords of manors, or other royalties, not under the degree of an eſquire, may by writing under their hands and ſeals (A) authorize one or more gamekeeper or gamekeepers, within their reſpective manors or royalties. 22 & 23. *C.* 2. *c.* 25. *ſ.* 2.

With power to kill game.

2. And may impower him thereby, upon their own manors, to kill hare, pheaſant, partridge, or any other game:

But if the gamekeeper ſhall, under colour thereof, kill or take the ſame for the uſe of the lord, and afterwards ſell and diſpoſe thereof without the lord's conſent; and be convicted, on complaint of ſuch lord, and on oath of one witneſs, before one juſtice; he ſhall be committed to the houſe of correction for three months, to be kept to hard labour. 5 *An.* *c.* 14. *ſ.* 4.

One gamekeeper in one manor; and to be entred with the clerk of the peace.

3. But no lord of a manor ſhall make above one perſon to be gamekeeper within any one manor, with power to kill game. And the name of ſuch perſon ſhall be entred with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof ſhall be granted by the clerk of the peace, on payment of one ſhilling:

And if any other gamekeeper, whoſe name is not ſo entred, *who ſhall not be otherwiſe qualified* by the laws of this kingdom to kill game, ſhall kill, ſell, or expoſe to ſale any hare, pheaſant, partridge, moor, heath game, or grouſe; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit for every offence 5 l, half to the informer, and half to the poor, by diſtreſs: for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. 9 *An.* *c.* 25. *ſ.* 1.

Who ſhall not be otherwiſe qualified] From theſe words it ſeemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entred with the clerk of the peace.

To be alſo a ſervant of the lord, or immediately employed for him.

4. And moreover, by the 3 *G.* *c.* 11. it is further enacted, that no lord of a manor ſhall make any perſon to be a gamekeeper with power to kill game, unleſs ſuch perſon be qualified by the laws of this realm ſo to do; or unleſs ſuch perſon be truly and properly a ſervant to the ſaid lord; or be immediately employed and appointed to take and kill the game for the ſole uſe of the ſaid lord, and not otherwiſe:

And if any perſon, not being qualified by the laws ſo to do, or not being truly and properly a ſervant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the ſole uſe or immediate benefit of the ſaid lord, ſhall under colour or pretence of any power or authority, deputation or qualification to him granted by any lord of a manor, take and kill any hare, pheaſant, partridge, or other game whatſoever; or ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and deſtroy the game; he ſhall forfeit 5l in like manner. *ſ.* 1.

5. The gamekeeper (ſo authoriſed) may ſearch for dogs and engines, and ſeize the ſame for the uſe of the lord, or deſtroy them. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2. Gamekeeper's power to ſearch.

But it hath been adjudged, that an authority from the lord of the manor is not of itſelf ſufficient for this purpoſe, but that he ought to have a warrant from a juſtice of the peace. *Comb.* 183. *Carpenter* and *Adams.* At leaſt it may be ſafe to have ſuch warrant, eſpecially if any houſes are to be entred and ſearched.

For it would give too great a power to the gamekeepers, to leave it in their diſcretion to ſearch what places they ſhall think proper, as alſo to conſtitute them the judges whether ſuch or ſuch a perſon is or is not qualified to kill game. Therefore it is beſt to have a warrant from a juſtice of the peace, after information and oath of the offence firſt made.

6. *M.* 9 *G.* 3. *Rogers* and *Carter.* The plaintiff *Rogers* brought an action againſt the defendant being a juſtice of the peace, for taking and carrying away the plaintiff's gun. On a verdict for the plaintiff, a new trial was moved for. The caſe was, The plaintiff, being gamekeeper within the manor of *Ringwood*, in beating for game within the ſaid manor, ſprung a covey of partridges, which he ſhot at within the ſaid manor. They took a ſecond flight, and he purſued them out of the manor, but could not find them. As he was returning to the manor of *Ringwood*, he was met by the defendant about three quarters of a mile diſtant from that manor, who aſked him if he had a qualification. The plaintiff anſwered, I have a deputation from the lord of the manor of *Ringwood.* The defendant replied, you are now out of that manor; and demanded his gun, and took it from him. The defendant did not ſhoot out of the manor, but was three quarters of a mile out of the manor, with his gun and dog, with an intention to ſhoot at game. By the court: The queſtion is, whether the juſtice had a right to take Whether he may carry a gun out of the manor.

the

the plaintiff's gun from him, whilſt he was ſporting for the purpoſe of killing game in another manor, out of the manor of *Ringwood*. And we are all of opinion, he had not ſuch right. If he had killed game where he was not a gamekeeper, he might have been convicted in the penalty of 5l; but he was intitled to keep and have dogs, guns, and nets any where, and a gamekeeper's gun cannot be ſeized either in going to or returning from the manor, or in any other place; and if gamekeepers were permitted to ſeize one another's guns, it would create a kind of border war amongſt them. And the rule to ſhew cauſe why there ſhould not be a new trial was diſcharged. 2 *Wilſon* 387.

IV. Qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.

The qualification by eſtate for killing game, in the reign of K. *Richard* the ſecond, was 40s a year; in the reign of K. *James* the firſt it was advanced to 10l a year, and after that in ſome inſtances to 40l a year; and at laſt in the reign of K. *Charles* the ſecond it was raiſed to 100l a year. Not that the laws have become graudually more ſevere; but as the value of money decreaſed, the qualification was raiſed in proportion, the eſtate continuing nearly the ſame; for an eſtate of 40s a year in the reign of K. *Richard* the ſecond was not much inferior to an eſtate of 100l a year in the reign of K. *Charles* the ſecond. And the penalty for deſtroying the game was even more ſevere then than it is now; as I ſhall ſhew. For as thoſe ancient laws relating to the game are ſtill in force, and are generally enacted ſo to be by the ſubſequent ſtatutes, it will be neceſſary in order to have a thorough knowledge of this matter to inſert them in their order; becauſe the penalties on each being different, the proſecutor or juſtices may chuſe which of them they will convict an offender upon. Thus by the ſtatute of the 5 *An.* hereafter following, if a perſon not having 100l a year ſhall keep dogs or engines to deſtroy the game, he ſhall forfeit 5l; but if ſuch perſon have not 40s a year, he may upon the ſtatute of *R.* 2. be puniſhed by a year's impriſonment; and ſo of the reſt: provided that no perſon be proſecuted upon more than one act for one offence.

40s a year.

The firſt qualification relating to the game, was in the 13th year of the reign of *R.* 2. by which it is enacted, that

that no layman which hath not lands or tenements of 40s a year, nor clergyman if he be not advanced to 10l a year, ſhall have or keep any greyhound, hound, nor other dog to hunt; nor ſhall uſe fyrets, hays, nets, hare-pipes, nor cords, nor other engines for to take or deſtroy hares, nor conies, nor other gentlemens game: on pain of a year's impriſonment. And the juſtices of the peace (that is, in their ſeſſions) ſhall inquire of the offenders in this behalf, and puniſh them by the pain aforeſaid. 13 *R.* 2. *ſt.* 1. *c.* 13. 16 *G.* 3. *c.* 30.

2. The next qualification by eſtate or degree to kill game, was by a ſtatute in the 1 *J.* whereby it is enacted that every perſon who ſhall keep any greyhound for courſing of deer or hare, or ſetting dog or net to take pheaſants or partridges (except he be ſeiſed, in his own right or the right of his wife, of 10l a year eſtate of inheritance, or 30l a year of a lives eſtate, or goods to the value of 200l, or be the ſon of a knight or lord, or the ſon and heir apparent of an eſquire) and be thereof convicted, by confeſſion, or oath of two witneſſes, before two juſtices, he ſhall be committed to gaol three months, unleſs upon conviction he pay 20s to the churchwardens for the uſe of the poor, or after one month after his commitment he become bound by recognizance with two ſureties before two juſtices, in 20l a piece, not to offend again in like manner. 1 *J.* *c.* 27. *ſ.* 3. 10l a year.

3. The next qualification relates to deer and conies only, in the 3 *J.* *c.* 13. by which it is enacted, that if any perſon not having hereditaments of 40l a year, or not worth in goods 200l, ſhall uſe any gun or bow to kill any deer or conies; or ſhall keep any buckſtall, nets, or coney dogs (except he have grounds incloſed, and uſed for the keeping of deer or conies, the increaſing of which ſaid conies ſhall amount to the value of 40s a year; or keepers or warreners in their parks, warrens, or grounds); in ſuch caſe any perſon having lands or hereditaments of 100l a year in fee, or for life, in his own right or the right of his wife, may take from ſuch perſon to his own uſe for ever ſuch guns, bows, buckſtalls, nets, and coney dogs. 3 *J.* *c.* 13. *ſ.* 5. 40l a year.

4. The next qualification relates to pheaſants and partridges only, and is as follows: Every free warrener, lord of a manor, or freeholder ſeiſed in his own or his wife's right, of 40l a year of inheritance, or lives eſtate of 80l, or worth in goods 400l, may take pheaſants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt *Michaelmas* and *Chriſtmas* yearly. 7 *J.* *c.* 11. *ſ.* 7. 40l a year.

100 l.

5. The laſt general qualification by eſtate or degree to kill game, and which is now moſt to be regarded, is in 22 & 23 *C.* 2. *c.* 25. by which it is enacted, that *every perſon, not having lands and tenements, or ſome other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100l per annum, *or for term of life, or having leaſe or leaſes of* 99 *years, or for any longer term, of the clear yearly value of* 150l, (*other than the ſon and heir apparent of an eſquire, or other perſon of higher degree, and the owners and keepers of foreſts, parks, chaſes, or warrens, being ſtocked with deer or conies for their neceſſary uſe, in reſpect of the ſaid foreſts, parks, chaſes or warrens*) *is hereby declared to be a perſon by the laws of this realm, not allowed to have or keep for himſelf or any other perſon, any guns, bows, grey-hounds, ſetting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, ſnares, or other engines for the taking and killing of game.* ſ. 3.

Of the clear yearly value of 100l per annum] *M.* 22 *G.* 3. *Wetherell* and *Hall.* On an action of debt againſt the defendant, for the penalty of 5l for uſing a certain engine called a gun to kill and deſtroy the game, not being qualified by the laws of this realm ſo to do, the cauſe came on to be tried at *Durham* aſſizes 1782, when the jury found a verdict for the plantiff, ſubject to the opinion of the court of king's bench, on the following caſe. The defendant *Hall*, having an eſtate of 103l a year, mortgaged a part of it, of the value of 14l a year, to *Robert Kelſey*, for 400l; which part being copyhold, he ſurrendered the ſame, according to the cuſtom of the manor, to the ſaid *Robert Kelſey*, who thereupon was admitted tenant. But *Kelſey* never entred upon the premiſſes, *Hall* continuing in poſſeſſion, and paying intereſt of the mortgage regularly. The queſtion for the opinion of the court was, whether the defendant was duly qualified to uſe engines to kill and deſtroy the game.——The counſel for the plaintiff made two points; Firſt, that a *legal* eſtate is neceſſary to conſtitute a qualification, and that an *equitable* eſtate (ſuch as is that of a mortgage) cannot be taken notice of in the conſtruction of an act of parliament in a court of law. Secondly; If an equitable eſtate is ſufficient to conſtitute a qualification, then that the defendant had not a ſufficient eſtate in point of *annual value*. In endeavouring to ſupport the firſt point the counſel was ſtopped by lord *Mansfield*, who aſked if he had no better ground to go upon? As to the ſecond point, the council contended, that the object of the legiſlature was, that perſons intitled to kill game ſhould have ſuch a clear income

income arising out of lands, as would enable him to live upon it in an independent manner; that the legiſlature had drawn the line, and made 100l a year the meaſure of that independence. And ſeveral caſes were put, with a view to prove, that the net income, and not the groſs value of the eſtate, was intended to conſtitute the qualification.——For the defendant it was argued, that a mortgage is to be conſidered as a ſpecialty debt only, and the intereſt of the mortgagee therein merely as a debt, and not a charge iſſuing out of the eſtate: That the legiſlature meant to advert only to the value of the eſtate, and not to the quantum of intereſt which any perſon has in it, provided he is in poſſeſſion of ſuch eſtate as his own: That the penalties under the game laws are recoverable in a ſummary way, and it cannot be ſuppoſed that the legiſlature meant to give juſtices of the peace power of inquiring into all the debts which may affect the eſtate: That the ſtatutes of 1 *J.* *c.* 27. and 7 *J.* *c.* 11. after deſcribing the eſtate requiſite for a qualification under thoſe acts, add the words *over and above all charges and reprizes*, which are omitted in this preſent ſtatute: That the legiſlature meant ſomething which is ſtrictly iſſuing out of the eſtate, and not a collateral charge: That a mortgagor in poſſeſſion is always permitted to vote for knights of the ſhire, without any regard to the mortgagee in whom the legal title may be veſted.——By lord *Mansfield* (without waiting for a reply): We conſider the defendant's intereſt in this court, juſt as it would be conſidered in a court of equity; namely, as an intereſt ſubject to the payment of the mortgage money. It is a qualification of property; and the perſon muſt have a property in the land to the value of 100l a year; but it is not neceſſary that he ſhould have a legal eſtate. Juſt ſo it is with reſpect to knights of the ſhire; if the voter can ſwear that he has 40s a year ariſing out of the land, it is no matter in whom the legal eſtate is. There is nothing in the caſe.—*Willes* and *Aſhurſt*, juſtices, of the ſame opinion.—*Buller* juſtice: I am of the ſame opinion. The two ſtatutes of king James ſtrengthen the plaintiff's caſe; becauſe, as all the ſtatutes upon the ſame ſubject are to be conſidered as one ſyſtem of law, the words in theſe two ſtatutes muſt be transferred to the ſtatute in queſtion.——And judgment was given for the plaintiff. *M. S.*

Or for term of life] It hath been doubted upon theſe words, in what order of qualification an eccleſiaſtical living ſhall be ranked, which a man holds not in his own or his wife's right, but in the right of his church. It is

allowed to be a life's eſtate, altho' it may happen to be determined ſooner, as by reſignation, deprivation, or accepting another living incompatible. But the queſtion is, whether theſe words ſhall belong to the former or the latter part of the ſentence. The difficulty ſeems to be partly occaſioned by the disjointed manner of punctuation. But the points are no part of the ſtatute. The ſtatutes themſelves are without points: the punctation is only made by the printer. Abſtracted from the punctation, it ſhould ſeem that the former part of the ſentence, reſpecting the qualification of 100l a year by an eſtate of inheritance, ought to terminate with the words *per annum*. And that a life eſtate, being of inferior quality, ought to be coupled with leaſehold, whereof 150l a year is neceſſary to conſtitute a qualification.

Other than the ſon and heir apparent of an eſquire] Eſquire *eſcuyer*, *ſcutarius*, called by the Saxons *ſchilt knaben* or *knapen* (from whence cometh the word *knave*, which anciently ſignified a ſervant), is a name of dignity, next above the common title of gentleman, and below a knight. Heretofore he was attendant, and had employment as a ſervant, waiting on ſuch as had the order of knighthood, bearing their *ſhields*, and helping them to horſe, or ſuch like. And this title is of that nature with us now, that to whomſoever either by blood, or place in the ſtate, or other eminency, we conceive ſome higher attribute ſhould be given than that ſole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we uſualy ſtile him an eſquire, in ſuch paſſages as require legally that his degree or ſtate be mentioned. *Seld. Tit. of Hon.* 374, 462, 687.

Or other perſon of higher degree] In the order of precedence, the heralds, next below knights and their ſons, and above eſquires, rank (1) colonels, (2) ſerjeants at law, and (3) doctors in the three learned profeſſions. 1 *Blackſt.* 405.

Searching for dogs and engines.

6. *And the gamekeeper, or any other perſon (authorized by warrant (B) of a juſtice of the peace) may in the day time ſearch the houſes, outhouſes, or other places of any ſuch perſon prohibited by this act to keep or uſe the ſame, as upon good ground ſhall be ſuſpected to have or keep in his cuſtody any guns, bows, greyhounds, ſetting dogs, ferrets, coney dogs, or other dogs to deſtroy hares or conies, hays, tramels, or other nets, lowbels, harepipes, ſnares, or other engines aforeſaid, and the ſame to ſeize, and keep, for the uſe of the lord of the manor,*

man, or otherwiſe to cut in pieces or deſtroy. 22 & 23 C. 2. c. 25. ſ. 2.

7. And if any unqualified perſon ſhall have, keep, or uſe any bows, greyhounds, ſetting dogs, ferrets, coney dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, ſnares, or any other inſtruments for deſtruction of fiſh, fowl, or other game; and ſhall not give a good account before a juſtice, to the ſatisfaction of ſuch juſtice how he came by the ſame, or elſe ſhall not in ſome convenient time (to be ſet by ſuch juſtice) produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof; he ſhall forfeit for every offence not under 5s, nor above 20s, half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour. And if any perſon ſo produced or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. 4 & 5 *W.* c. 23. ſ. 3. 20 s penalty for keeping dogs and engines.

And all lords of manors or their gamekeepers may within their manors oppoſe and reſiſt ſuch offender, in the night time, in the ſame manner as if the fact had been committed in any ancient chaſe, park, or warren incloſed. ſ. 4.

And no certiorari ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in 50l, with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed, or *procedendo* granted, full coſts and charges; and in default thereof, the juſtice ſhall proceed to the execution of the conviction. ſ. 7.

8. But by a ſubſequent ſtatute 5 *An.* c. 14. *If any perſon, not qualified by the laws of this realm ſo to do, ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engine to kill and deſtroy the game, and ſhall be thereof convicted* (CDE) *on the oath of one credible witneſs, before one juſtice, he ſhall forfeit* 5l, *half to the informer, and half to the poor of the pariſh where the offence was committed, to be levied by diſtreſs and ſale of the offender's goods* (F); *for want of diſtreſs, to be ſent to the houſe of correction* (G) *for three months for the firſt offence, for every other offence four months.* 5l penalty for keeping dogs and engines; and the ſame to be ſeiſed.

And any juſtice, and lord within his manor, may take away ſuch dogs, nets, or other engines, which ſhall be in the power or cuſtody of any perſon not qualified. ſ. 4.

If any perſon] *H.* 13 *G.* 3. *K. & Newman.* An information was moved for againſt a juſtice, for convicting two perſons for uſing greyhounds to deſtroy game; which perſons were themſelves unqualified, but were out with a qualified perſon; which they pleaded in their defence, and that the dogs were not their own. The juſtice ſaid he knew it, and thereupon convicted them.—On behalf of the juſtice, Mr. ſerjeant *Burland* ſaid, that the convicted perſons being by their own evidence not qualified, and it not appearing by any evidence expreſsly that the perſon they were with was a qualified perſon, or that the dogs were (as they aſſerted) not their's, but his, he hoped the information would not be granted. It was further ſaid, that it hath never been adjudged, that unqualified perſons, out with qualified, were free from the penalty; nor that it ſignified, whether the dogs belonged to the qualified men, or to the others: For the being out to *uſe* them, was ſufficient within the ſtatute; or at leaſt it had been much doubted.——Lord *Mansfield:* Let the juſtice pay the whole coſts, and go before the maſter.——Upon which, the ſerjeant ſaid, Does your lordſhip then think them ſufficiently qualified?——Lord *Mansfield:* Yes; and it is matter of tenderneſs to take it this way. I know you to be very judicious, and thought you led to it. The defence you ſet up for the juſtice, was none; if it had ever been thought of by him. Shall not a gentleman take any body out with him, to beat the buſhes, and ſee a hare killed? It appeared alſo on the evidence, that the ſummons was taken out on the *Sunday*, and that the parties aſked an hour's time to go for Mr. *Linch*, the gentleman they went out with, who, they ſay, is worth ſeveral hundreds a year. It is not pretended on the other ſide, but they might have brought this witneſs in three or four hours at longeſt. This (as his lordſhip added), with ſome of the abovementioned, were very aggravating circumſtances: However, you know the ſtrength of your own caſe: Take it by way of information.——The ſerjeant, however, thought it adviſeable to deſire leave to refer it to the maſter. Which was granted accordingly. *Lofft.* 178.

Not qualified by the laws of this realm] In the caſe of *K.* and *Chandler*, *T.* 12 *W.* Holt Ch. J. in delivering the opinion of the court, upon a conviction for deer-ſtealing, ſaid, that in theſe convictions by juſtices of the peace in

a ſummary way, where the ancient courſe of proceeding by indictment and trial by jury is diſpenſed with, the court may more eaſily diſpenſe with forms; and it is ſufficient for the juſtices, in the deſcription of the offence, to purſue the words of the ſtatute, and they are not confined to the legal forms requiſite in indictments for offences by the common law. L. *Raym.* 581.

T. 10 *An.* Q. and *Matthews.* On a conviction upon this ſtatute, exception was taken, that the conviction reciting the defendant not to be a perſon ſo and ſo qualified and enumerating diſtinctly the ſeveral qualifications in 22 & 23 *C.* 2. omitted a new qualification allowed by this act, namely, that he was not a perſon authoriſed by a lord (or lady) of a manor to kill game for his uſe. And by the court; Had it been generally laid thus, that he not being a perſon qualified according to law, and ſo on, it had been enough; but the qualifications being diſtinctly and ſeverally mentioned, the omiſſion of one is fatal. 10 *Mod.* 26. [But the caſe was adjourned.]

M. 4. *G. K.* and *Marriot.* There was a conviction for keeping a greyhound; reciting that one *William Toune* came and informed, that the defendant being a perſon not qualified to keep a greyhound, did nevertheleſs keep one at ſuch a place, and therewith killed ſeveral hares; and that he being ſummoned did appear, and being aſked what he had to ſay, offered nothing in excuſe, and therefore the juſtice convicted him. It was objected, that the juſtice ſhould ſet out, why the defendant is not a qualified perſon, as that he is not the ſon of an eſquire, nor has 100l a year in his own or his wife's right: For he ought not to make himſelf the ſole judge, but give the reaſons at large. *Parker* Ch. J. ſeemed to think the conviction would be good, having followed the words of the ſtatute, and that if the defendent was qualified, he ought to have ſhewn it before the juſtice, being ſummoned for that purpoſe. *Eyre* J. ſtarted an objection, that it was not the juſtice that had taken upon him to ſay the defendant was not qualified; but only the witneſs: for the conviction runs, that the witneſs being ſworn ſaith, that the defendant *being a perſon no way qualified* did ſuch a day keep a greyhound; ſo that it appears, the witneſs has given the law to the juſtice, and takes upon himſelf to judge of the defendant's qualifications, and the juſtice is only made uſe of as an inſtrument, to reduce the opinion of the witneſs into a conviction. By *Parker* Ch. J. the *being not qualified* ſhould be the concluſion of the

juſtice, and not the words of the witneſs; for he ought not to ſwear generally a man is not qualified, and ſuch a general proof will not be good: This is only an invention, to ſupport a conviction in general terms, which would be bad if the particular facts were alledged. *Pratt* J. Where the juſtices have a ſummary juriſdiction, and no appeal lies (as in this caſe), we muſt keep them up ſtrictly to the law; and I ſhould be glad if we could make them ſet out the whole particularly. The caſe was adjourned. And afterwards *Pengelly* ſerjeant mentioned two caſes, *Q.* and *Hayward*, *E.* 12 *An.* There it was, *not being qualified, licenſed, or authoriſed to keep any engine*, and it was quaſhed. The other was in the ſame term, and quaſhed, becauſe no qualifications were mentioned. And towards the end of the term this conviction was quaſhed; and the principal reaſon declared to be, becauſe the witneſſes had taken upon themſelves, to judge of the qualifications. *Str.* 66.

H. 12 *G. K.* and *Hill.* The defendant was convicted, for unlawfully keeping a lurcher and a gun to kill and deſtroy the game, *not being qualified by the laws of this realm, ſo to do.* And the conviction being removed into the king's bench by certiorari, was quaſhed; becauſe it was only averred generally, that he was not qualified, and did not aver that the defendant had not the particular qualifications mentioned in the ſtatute, as to degree, eſtate, and the reſt. L. *Raym.* 1415.

E. 9 *G.* 2. *Bluet* and *Needs.* In an action *qui tam* on the ſtatute, it was objected, that it is not ſufficient to ſay he was not qualified, without ſhewing he had not 100l a year, nor other eſtate which makes a qualification. By the court, It is ſufficient if the words of the ſtatute be purſued; and the defendant may come in and ſhew his qualification. Indeed, *convictions* have been quaſhed for not ſetting forth what was the want of qualification, becauſe it muſt be made out before the juſtice, that he had no ſuch qualification as the law requires; and therefore the juſtice ought to return, that he had no manner of qualification, before he can convict the defendant. *Comyns*, 522.

M. 12 *G.* 2. *K.* and *Bryan.* Which was a conviction on the gin act, exception was taken, that there was no averment, that it was not ſold to be uſed in medicine: and the caſes on the game act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game. On the other hand, it was inſiſted that the reaſon of that was, becauſe thoſe were in the enacting clauſe,

clauſe, whereas this about medicine comes in by way of proviſo, and is by way of defence to be ſhewn on the defendant's part. And for that purpoſe was cited *K.* and *Theed*, *M.* 11 *G.* where in a conviction for obſtructing an exciſe officer on the 8 *An. c.* 9. it was objected, that it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but it was held to be well, and that its being in the night ſhould have been ſhewn on the defendant's part. And by the court, This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. And the conviction was confirmed. *Str.* 1101.

Finally, in the caſe of *K.* and *Jarvis*, *H.* 30 *G.* 2. The conviction did ſet forth, that the defendant did unlawfully keep and uſe, and had in his cuſtody and poſſeſſion, one ſetting dog and ſetting net, for the deſtruction of the game; and that he the ſaid *Jarvis* was not then any wiſe qualified, impowered, licenſed, or authoriſed, by or according to the laws of this realm to kill game. It was moved to quaſh this conviction. And by lord *Mansfield* Ch. J. It is now ſettled by the uniform courſe of authorities, that the qualifications muſt be all negatively ſet out: Otherwiſe the juſtices have no juriſdiction over the perſons killing game, or keeping dogs or engines for the deſtruction of it. The *obiter* ſaying in 10 *Mod.* (if it was a book of better authority than it is) would ſignify nothing, when the determinations are the other way. There is a great difference between the purview of an act of parliament, and a proviſo in an act of parliament. In the caſe of *K.* and *Marriot*; where the witneſs ſwears only generally, it was holden ſufficient: And the juſtices who convict upon the evidence of the witneſs, can have no other or further ground to go upon, than what the witneſs ſwears. In the caſe of *K.* and *Hill*, it is the very point eſtabliſhed and ſettled, that the general averment is not ſufficient, and that it muſt be averred that the defendant had not the particular qualifications mentioned in the ſtatute. In the caſe of *Bluet Qui tam*, and *Needs*; the general averment of the defendant's not being qualified, was holden to be ſufficient upon an action, though inſufficient upon a conviction: The diſtinction is obvious between an action and a conviction. In the preſent caſe, the witneſs ſwears generally, that the defendant was not qualified. The juſtices adjudge it generally, only. The ſtream can go no higher than the ſpring head. So the concluſion,

concluſion, which the juſtices draw from the teſtimony of the witneſs, muſt be as general as that teſtimony. In the caſe of *K.* and *Pickles*, *M.* 19 *G.* 2. it was laid down as a rule, that the want of the particular qualifications required by the 22 & 23 *C.* 2. *c.* 25. ought to be negatively ſet out in convictions. And the only queſtion there was, whether it was neceſſary to add the inferred or argumentive qualification, collected from the 5 *An.* *c.* 14. but not mentioned in the 22 & 23 *C.* 2. *c.* 25. of his not being lord of a manor. *Exceptio probat regulam:* Nor was the general rule at all doubted or diſputed in that caſe. In indictments upon the 8 & 9 *W.* *c.* 26. for having a coining preſs, every thing which ſhews that the defendant had no authority, muſt be negatively ſet out: And ſo it was done, in the indictment of *Bell*, which was lately argued before all the judges. I take the point to be ſettled, by the conſtant tenor of all the authorities; and I think upon very good reaſon (if there was need to enter into the reaſon at large, after it has been fully ſettled already).——Mr. juſtice *Deniſon* concurred, and ſaid, it was a clear caſe, and that it was fully ſettled and eſtabliſhed, that in theſe convictions, the want of the particular qualifications mentioned in the 22 & 23 *C.* 2. ought to be negatively ſet out. If not, the juſtices have no juriſdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he hath not the qualifications which are ſpecified in that act, nor any of them. Indeed you are not obliged to go further than the words of this act of parliament of the 22 & 23 *C.* 2. and that was the caſe of *K.* and *Pickles*. But however in that caſe, the preſent point was eſtabliſhed, and taken to be indiſputable.——Mr. juſtice *Foſter* alſo concurred, and ſaid, that on negative acts of parliament, the point is fully ſettled and eſtabliſhed, that the particular qualifications mentioned in the purview of them, muſt be negatively ſpecified in convictions made upon them.——And by the court unanimouſly, the conviction was quaſhed. *Burrow*, *Manſfield.* 148.

Shall keep or uſe] *H.* 8 *G.* *K.* and *Filer.* Conviction for *keeping* a lurcher to deſtroy game, not being qualified. Exception was taken, that it was not ſhewn he *uſed* the dog to deſtroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, the ſtatute is in the disjunctive, *keep* or *uſe*; ſo that the bare *keeping* a lurcher is an offence; and ſo it was determined in the caſe

caſe of *K.* and *King*, *E.* 3 *G.* which was a conviction for keeping a gun; and it was not doubted by the court, whether the *keeping* was not enough to be ſhewn, but the only queſtion they made was, whether a gun was ſuch an engine as is within that ſtatute; and in that caſe a difference was taken, as to the keeping a *dog*, which could only be to deſtroy the game; and the keeping a *gun*, which a man might do for the defence of his houſe. And the conviction was confirmed. *Str.* 496.

Uſe] In the caſe of *K.* and *King* aforeſaid, *Parker* Ch. J. ſaid, that walking about with intent to kill game, is evidence of *uſing* the inſtrument for that purpoſe. *Seſſ. C. P.* 1. 88.

Any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engines] *H.* 13 *G.* 2. *Hooker* and *Wilks*. An action was brought on the 8 *G. c.* 19. for uſing a *hound* to deſtroy game. And after a verdict for the plaintiff, the judgment was arreſted; for the ſtatute of the 5 *An. c.* 14. has not the word *hound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. The ſtatute of the 22 & 23 *C.* 2. *c.* 25. has indeed general words *or any other dogs to deſtroy game*; but this is not a conviction on that ſtatute. *Str.* 1126.

Nor indeed could it have been a conviction on that ſtatute, for any penalty in certain for killing and deſtroying the game; for the ſtatute of the 22 & 23 *C.* 2. doth not inflict a general penalty upon perſons unqualified who ſhall kill and deſtroy the game; but only declares, who ſhall or ſhall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to ſeize the dogs, nets, and other engines of ſuch unqualified perſons. But if the defendant did kill the game, and had the ſame in his cuſtody; he might have been proſecuted for the penalty of 20 s for ſuch offence, by the ſtatute of the 4 & 5 *W.* hereafter following.—But then the conſequence of all this will be, that it is not penal barely to *keep* a *hound* on this ſtatute of the 5 *Ann.* but if any unqualified perſon ſhall do ſo, the gamekeepers or others, authorized by a juſtice's warrant, may ſeize and keep or deſtroy the ſame, by the aforeſaid ſtatute of the 22 & 23 *C.* 2.

So in the caſe of *Reaſon* and *Liſle*, *T.* 11 *G.* 2. On an action upon the ſtatute, the plaintiff declared, that the defendant did keep and uſe a *dog* to deſtroy the game. It was objected, that he ought to have expreſſed what

ſort

ſort of dog; for it might be a maſtiff, or a lap dog, which might chance to kill game; and the ſtatute only mentions greyhounds, ſetting dogs, and lurchers; and this being a penal law, ſhall not be extended by equity. And of this opinion was the court. And judgment was arreſted. *Comyns*, 576.

Any other engines] *T.* 11 *G.* 2. *K.* and *Gardiner*. It was moved to quaſh a conviction, for unlawfully having and keeping a *gun*, being an engine or inſtrument for deſtroying the game. And it was urged, that this is no ſufficient charge within this act, or any other of the laws relating to the game: for it is not ſaid, that the defendant *uſed* the gun for the deſtruction of game; and a gun is not an inſtrument ſo far appropriated to killing game, as that it is criminal for a perſon to have one in his cuſtody only: And it would have been altogether as well, if it had been ſaid that the defendant had in his cuſtody a *cane* for the deſtruction of the game, which may poſſibly be uſed for that purpoſe. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be uſed in, the deſtroying of game. A gun is an engine, not for killing the game, but for the defence of a man's houſe. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the ſtatute is to be conſtrued ſo largely, as to extend to the bare having of any inſtrument, that may poſſibly be uſed in deſtroying game, it will be attended with very great inconvenience; there being ſcarce any, tho' ever ſo uſeful, but what may be applied to that purpoſe. And tho' a gun may be uſed in deſtroying game, and when it is ſo, doth then fall within the words of the act; yet as it is an inſtrument proper, and frequently neceſſary to be kept and uſed for other purpoſes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the deſtruction of game, that is prohibited by the act: but otherwiſe it is of lurchers, harepipes, and ſuch like, which are peculiarly fitted or diſpoſed for killing game. The bare *keeping* of theſe for the purpoſe of killing game, is ſufficient to convict an offender, and it will be incumbent upon the defendant himſelf to prove, that he kept them for other purpoſes. And the conviction therefore was quaſhed. After which, *Strange* ſolicitor general ſaid that in the caſe of *K.* and *King*, *E.* 3 *G.* Lord *Macclesfield* ſaid, that he was in the houſe of commons when this act was made, and he himſelf objected to the inſerting of

the word *gun* therein, becauſe it might be attended with great inconvenience. *Andr.* 255. *Seſſ. C. V.* 2. 204. *Str.* 1098.

And ſhall be thereof convicted] *H.* 6 *G. K.* and *Johnſon.* Conviction for keeping a gun, not being qualified. Exception was taken, that here was not a reaſonable *ſummons*; for it was made on the fifth of *October*, to appear the ſame day, which might be impoſſible upon account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning; then it is to appear *at the pariſh aforeſaid*, whereas there are two pariſhes mentioned before; ſo the man may have gone to one, whilſt they were convicting him at the other. It was anſwered, that the defendant appeared at the time and made defence, ſo that cures all defects in the ſummons. And by the court, The anſwer is right. *Str.* 261.

H. 5 *G.* 2. *K.* and *Heber.* On a rule to ſhew cauſe, why an information ſhould not be granted againſt the defendant Mr. *Heber*, a juſtice of the peace, for convicting two perſons, *Hargrave* and *Lancaſter*, for killing game not being qualified; the complaint in relation to *Hargrave* was, that the defendant ſent his warrant for him, by which he was arreſted, without any previous information upon oath; in relation to *Lancaſter*, the complaint was, that he happening to be preſent at the time *Hargrave* was convicted, the defendant took that opportunity of convicting him alſo, without giving him any previous ſummons, by which he might prepare himſelf for his defence. The court (the chief juſtice being abſent) were very clear, that an information ought to go againſt the defendant for his behaviour in relation to *Lancaſter*; for they ſaid, it was a moſt known rule of common juſtice, that no man ought to be convicted of an offence, till he has previous notice given him of the charge, that he may be prepared to put in his anſwer to it. Accordingly the rule, as to him, was made abſolute. As to *Hargrave*, judge *Probyn* thought, that the rule, with reſpect to him alſo, ought to be made abſolute. He ſaid, a warrant deprives a man of his liberty; and therefore a ſummons ought only to iſſue, and not a warrant, without an information upon oath. The other two judges did not think this a ſufficient cauſe for granting an information. And therefore the rule, with reſpect to *Hargrave*, was diſcharged.—— In this caſe, the court would not proceed to make a rule to ſhew cauſe, until the convictions were removed thither by

by certiorari: for, they ſaid, if there was no conviction, there ought to be no information; and if there was a conviction, this ought to appear by the record. 2 *Barnardiſt.* 34, 77, 101.

On the oath of one credible witneſs] *H.* 9 *G. K.* and *Gage.* The defendant was convicted for uſing a greyhound in killing hares. Exception was taken to the conviction, that the ſtatute had only given the juſtices juriſdiction to convict upon the oath of one or more credible witneſſes, whereas this was upon his own confeſſion, which it was inſiſted the juſtices had no power to take. But by the court, The conviction muſt be confirmed. The intent of mentioning the oath of one witneſs, was only to direct the juſtices, that they ſhould not convict on leſs evidence: ſuppoſe the confeſſion had not been before the juſtices, but before two witneſſes who had ſworn it; that would be convicting him on the oaths of witneſſes, and yet the evidence would not be ſo ſtrong as this. Here the juſtices had a better evidence, than the oath of any ſingle witneſs; and it is a monſtrous thing to ſay, that a better ſort of evidence ſhall not do. *Str.* 546.

Credible witneſs] *M.* 2 *G.* 2. *K.* and *Stone.* A conviction was quaſhed, becauſe the informer was the witneſs; divers convictions having been quaſhed for the ſame reaſon before. L. *Raym.* 1545. The ſame adjudged in the caſe of *K.* and *Blaney*, *T.* 11 *G.* 2. *Andr.* 240. And in the ſtatute of the 2 *G.* 3. *c.* 19. it is recited, that in proſecutions on the act of 8 *G. c.* 19. in the courts at *Weſtminſter*, where a part of the penalty is given to the poor of the pariſh, the *inhabitants* of ſuch pariſh had been diſallowed to give evidence; and therefore in that caſe, to remedy the ſame, the act gives the whole penalty to the proſecutor, in order to enable the inhabitants to give evidence.

Before one juſtice] *H.* 12 *G. K.* and *Buck.* It was moved, to quaſh an *indictment* for killing a hare, this not being a matter indictable, the ſtatute appointing a ſummary proceeding before juſtices of the peace; and a caſe was cited *K.* and *James*, *T.* 1 *G.* where an indictment for keeping an alehouſe was quaſhed, becauſe the ſtatute of the 3 *C. c.* 3. had directed a particular remedy. And by the court, The indictment muſt be quaſhed. *Str.* 679.

Shall forfeit 5 *l*] *T.* 10 *An. Q.* and *Matthews.* On a conviction, exception was taken, that the perſon was charged

charged with ſo many 5 l, as he had killed hares in the ſame day. And the court was of opinion, that the offence for which the ſtatute gave the forfeiture, was the keeping dogs and engines, and not killing the hares. If a man not qualified goes a hunting, and kills never ſo many hares on the ſame day, he would forfeit but one 5 l, for it is but one offence; but if a man keeps dogs, and goes a hunting ſeveral days, and kills hares, if it was thus laid, that he ſuch a day kept dogs and killed, and then again ſuch a day, by laying it thus ſeverally, the offence is ſevered, and he ſhall forfeit 5 l for each offence. 10 *Mod.* 26.

So in the caſe of *Marriot* and *Shaw*, *E.* 4 *G.* where the defendant was convicted, that upon ſuch a day he kept and uſed a greyhound to kill and deſtroy the game at ſuch a place, that on the ſame day he kept and uſed a greyhound to kill and deſtroy the game at another place, and ſo at a third place, and killed ſeveral hares at the ſaid ſeveral places; it was adjudged by the court, that this being all done on the ſame day, was only one offence; for this ſtatute does not give 5 l for every hare; but only ſays, if any unqualified perſon ſhall keep or uſe any greyhound, or the like, to kill and deſtroy the game, he ſhall forfeit 5 l. *Comyns*, 274.

To the poor of the pariſh where the offence was committed] In ſome places a man may ſtand in one pariſh (or county), and ſhoot into two or three: in ſuch caſe, the place where the offence was committed is, where the party ſtood when he ſhot, and not where the object was which he ſhot at. *Show.* 339. *M.* 3 *W.* *K.* and *Alſop.*

By diſtreſs] *T.* 9 *G.* *K.* and *Burchet.* The court ordered an attachment (unleſs cauſe ſhewn) againſt the town clerk of *Guildford*, and a defendant convicted on the game act, for granting and ſuing out a replevin of goods diſtrained for the penalty. But on ſhewing cauſe the next term, when *Eyre* J only was preſent, he diſcharged the rule, becauſe it was only a contempt to the inferior juriſdiction of the juſtices, and in that caſe the king's bench never interpoſes. *Str.* 567.

But in the caſe of the king againſt the ſheriff of *Leiceſterſhire* and others, *M.* 2 *G.* 2. An attachment was moved for againſt the defendants, for replevying three horſes, which were ſeized as forfeited upon a juſtice's warrant, they being driven in a waggon contrary to act of parliament. The court, tho' they would not grant an attachment, yet made a rule to ſhew cauſe why an in-

formation ſhould not go. And on ſhewing cauſe, the court thought there was enough to excuſe the ſheriff; but granted it againſt *Parſons* whoſe horſes were ſeized, becauſe he knew that the juſtices had granted this warrant; but it did not appear that the ſheriff did. 1 *Barnardiſt.* 110.

And in the caſe of *K.* and *Monkhouſe*, *E.* 16 *G.* 2. The court granted an attachment againſt the under ſheriff of *Cumberland*, for granting a replevin of goods diſtrained on a conviction for deer-ſtealing. *Str.* 1184.

And ſale] *E.* 13 *G.* 3. *Feltham* and *Tarry*. The defendant levied money by ſeizing and ſelling the plaintiff's goods, on a juſtice's warrant founded on a conviction. Which conviction was afterwards quaſhed. And it was holden, that an action for money had and received then lay for the clear money produced by the ſale of the goods. *Buller's Law of Niſi prius.* 131.

For want of diſtreſs to be ſent to the houſe of correction] *T.* 12 *G. Hill* and *Bateman*. Before *Raymond* Ch. J. at *Weſtminſter*. The defendant *Bateman*, being a juſtice of the peace, had convicted the plaintiff for deſtroying game, and though (as it was proved) the plaintiff had effects of his own, which might have been diſtrained, which were ſufficient to anſwer the penalty he had incurred, yet the defendant ſent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of treſpaſs and falſe impriſonment being brought againſt *Bateman* for this commitment, the chief juſtice was of opinion, that the action well lay. *Str.* 710.

And [*no*] certiorari *ſhall be allowed to remove the conviction or other proceedings on this act, unleſs the party convicted ſhall before the allowance thereof become bound* (H) *to the proſecutor in* 50 l, *with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts and charges in* 14 *days after the conviction* [*confirmed*], *or* procedendo *granted. And in default thereof, the juſtice ſhall proceed in execution of the conviction in ſuch manner as if no* certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

Note; The word [*no*] is inſerted inſtead of the words [*if any*] which are in the act, ſince that word ſeemeth neceſſary to make up the ſenſe; and the word [*confirmed*] is added for the like reaſon. And indeed there have been too many inadvertencies in the drawing up of this act; for there is falſe grammar in no fewer than ſix places, beſides other miſtakes.

9. *And*

9. *And the conſtable, authorized by a juſtice's warrant, ſhall enter into and ſearch (in ſuch manner and with ſuch power as in caſe where goods are ſtolen, or ſuſpected to be ſtolen) the houſes, outhouſes, or other places belonging to ſuch houſes of ſuſpected perſons not qualified: And if any hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game, ſhall (upon ſuch ſearch, or otherwiſe) be found, the offender ſhall be carried before a juſtice; and if ſuch perſon do not give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time, to be ſet by the juſtice, produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and upon ſuch conviction ſhall forfeit for every hare, partridge, pheaſant, fiſh, fowl, or other game, any ſum not under 5 s, and not exceeding 20 s, half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour.* 4 & 5 W. c. 23. ſ. 3.

Search for game; with 20 s penalty for having it.

Or other game] Rabbets killed in a private warren, are not game within this act. L. *Raym.* 151.

For every hare, fiſh, fowl, or other game] Theſe words are very penal.

And if any perſon ſo produced, or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. id. ſ. 3.

And no certiorari *ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in* 50 l, *with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed, or* procedendo *granted, full coſts and charges; and in default thereof, the juſtice to proceed to the execution of the conviction.* id. ſ. 7.

10. *If any higler, chapman, carrier, innkeeper, victualler, or alehouſekeeper, ſhall have in his cuſtody or poſſeſſion, or ſhall buy, ſell, or offer to ſell any hare, pheaſant, partridge, moor, heath-game, or grouſe, unleſs ſuch game in the hands of ſuch carrier be ſent up by ſome perſon qualified;* (or, *if any perſon whatſoever, whether qualified or not, ſhall ſell, expoſe, or offer to ſale any hare, pheaſant, partridge, moor, heath-game, or grouſe,* 28 G. 2. c. 12.) *he ſhall be carried before a juſtice where the offence is committed* (1); *and being convicted thereof (in three months after the offence) on view, or oath of one witneſs, he ſhall forfeit for every hare, pheaſant, partridge, moor, heath-game, or grouſe, the ſum of* 5 l, *half to the informer,*

Carriers and others having game in their poſſeſſion.

former, and half to the poor, by diſtreſs, (K): *for want of diſtreſs, to be committed* (L) *to the houſe of correction for the firſt offence three months, and for every other offence four months.* 5 An. c. 14. ſ. 2.

And no certiorari *ſhall be allowed to remove the conviction or other proceedings, unleſs the party convicted ſhall before the allowance thereof, become bound to the proſecutor in* 50 l, *with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts in* 14 *days after the conviction confirmed, or* procedendo *granted. And in default thereof the juſtice ſhall proceed in execution of the conviction, in ſuch manner as if no* certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

And if any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſhall be found in the ſhop, houſe, or poſſeſſion of any poulterer, ſaleſman, fiſhmonger, cook, or paſtry cook, or of any perſon not qualified in his own right to kill game, or intitled thereunto under ſome perſon ſo qualified, it ſhall be deemed an expoſing thereof to ſale. 9 An. c. 25. ſ. 2. 28 G. 2. c. 12.

And any juſtice of the peace, and lord within his manor, may take away any ſuch hare, pheaſant, partridge, moor, heath-game, or grouſe, or any other game, from any ſuch higler, chapman, innkeeper, victualler, or carrier, or any other perſon not qualified, which ſhall be found in his cuſtody or poſſeſſion. 5 An. c. 14. ſ. 4.

And any perſon that ſhall deſtroy, ſell, or buy any hare, pheaſant, moor, heath-game, or grouſe, and ſhall in three months make diſcovery of any higler, chapman, carrier, innkeeper, alehouſekeeper, or victualler, that hath bought or ſold, or offered to buy or ſell, or had in their poſſeſſion any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſo as any one ſhall be convicted; ſuch diſcoverer ſhall be diſcharged of the pains and penalties hereby enacted for killing or ſelling ſuch game, and ſhall receive the ſame benefit as any other informer. 5 An. c. 14. ſ. 3.

Inferior tradeſmen killing game.

11. And whereas great miſchiefs do enſue by inferior tradeſmen, apprentices and other diſſolute perſons, neglecting their trades and employments, who follow hunting, fiſhing and other game to the ruin of themſelves, and damage of their neighbours, therefore if any ſuch perſon ſhall preſume to hunt, hawk, fiſh, or fowl (unleſs in company with the maſter of ſuch apprentice duly qualified); he ſhall not only be ſubject to the other penalties, but if he be proſecuted for treſpaſs, in coming on any perſon's land, and be found guilty, the plaintiff ſhall not only recover damages againſt him, but full coſts. 4 & 5 *W.* c. 23. ſ. 10.

For no man can come upon another man's ground to kill game, without being liable to an action of treſpaſs. 2 *Bac. Abr.* 613.

But if he is qualified to kill game, and the damage found ſhall be under 40 s, he ſhall in ſuch caſe pay no more coſts than damages. *id.*

T. 30 & 31 *G.* 2. *Buxton* and *Mingay.* In the common pleas. The plaintiff declared, that the defendant being an inferior tradeſman, viz. an apothecary, ſuch a day committed a treſpaſs in hunting in the plaintiff's cloſe. On a trial at the aſſizes, a verdict was found for the plaintiff, with 1 s damages, and 40 s coſts; ſubject to the opinion of the court, upon a caſe made, which ſtates, that it was proved at the trial, that the defendant at the time of the treſpaſs was a ſurgeon and an apothecary, and not qualified to kill game; that on ſuch a day he was hunting with divers others not qualified, in company with a perſon who was properly qualified to kill game, and committed a treſpaſs in the plaintiff's cloſe. The queſtion for the conſideration of the court was, whether upon the facts above ſtated the defendant ſhall be deemed an inferior tradeſman within the meaning of the ſtatute. This caſe was argued ſeveral times at the bar; and the judges were equally divided. For the plaintiff it was argued, that amongſt tradeſmen, no line can be drawn with reſpect to who are ſuperior and who are inferior, but they are all upon an equal footing as tradeſmen; but that the line which the legiſlature intended to draw was, between thoſe that were qualified and thoſe that were not: ſo that in this reſpect every tradeſman is inferior who is not qualified. For the defendant it was urged, that every caſe of this kind ought to be determined on it own particular circumſtances, and left to the jury, whether the defendant is an inferior tradeſman or diſſolute perſon within the ſtatute. The court being equally divided, no rule in this caſe was made. 2 *Wilſon.* 70. [Indeed, the word *inferior* ſeems to be applicable rather to the man than to the trade; ſo as that two perſons of the ſame trade may be one a ſuperior and the other an inferior tradeſman.]

E. 13 *G.* 3. *Pallant* and *Roll.* Treſpaſs, for that the defendant, being a diſſolute perſon, neglecting his employment, and following hunting and other game, and by no means qualified by law ſo to do, broke and entred the plaintiff's cloſes, and with dogs, guns, and other engines for deſtruction of the game, hunted upon the ſaid cloſes, trod down the graſs and corn, and broke the fences, a-

gainſt the form of the ſtatute. On Not Guilty pleaded, and iſſue thereon, a verdict was found for the plaintiff, at *Bury* aſſizes, for 1 s damages, ſubject to the opinion of the court upon the following caſe. The defendant was not qualified in his own right to kill game, but was, and for three years had been, a menial ſervant and huntſman to *Robert Leman*, Eſq; a gentleman of 1500 l a year eſtate, who had kept hounds for 20 years; and the defendant went out by his maſter's order with the hounds, his maſter not being preſent, and was beating over the plaintiff's grounds. The plaintiff deſired the defendant to go off his land, which he refuſed, and at length found a hare, and hunted it over ſeveral pieces of land mentioned in the declaration, two of which were ſown with wheat. The queſtion was, Whether, if the court ſhould be of opinion that the defendant is not a diſſolute perſon, or the like, under the ſtatute of 4 & 5 *W.* the plaintiff can recover againſt him in this action upon the ſtatute, or whether he ought to have brought a common action of treſpaſs for breaking his cloſe. By the court: We have no doubt, but that the defendant is not a diſſolate perſon within the meaning of the ſtatute. The only real queſtion is, Whether, as this action is framed, the plaintiff can recover any thing? He certainly cannot have his full coſts. If he cannot recover any thing, but is nonſuit, he muſt pay coſts. If he can recover, as upon a common action of treſpaſs, he ſaves his coſts. Now certainly any man might have always brought an action of treſpaſs for hunting upon his ground. For this injury, among others, the ſtatute of *Glouceſter* gave coſts as well as damages. The ſtatute 22 & 23 *C.* 2. *c.* 9. to prevent vexation, lowered the coſts, and if leſs than 40 s recovered, gave no more coſts than damages. This ſtatute of 4 & 5 *W.* reſtored full coſts again, even in caſe of ſmall damages recovered againſt diſſolute and other perſons deſcribed in the ſaid ſtatute. But as we are of opinion, that the defendant is not within theſe deſcriptions, the offence falls back upon the ſtatute of *C.* 2. whereby the plaintiff ſhall recover no more coſts than damages. And the verdict was entred by conſent, that the jury find the defendant not a diſſolute perſon, but guilty of the treſpaſs, damages 1 s, coſts 1 s. *Black. Rep.* 900.

E. 17 *G.* 2. Lord *Dacre* and *Tebb.* Declaration in treſpaſs, for breaking and entring his free warren in *Aveley* in the county of *Eſſex*, and chaſing, hunting, and killing divers foxes, hares, conies, partridges, and pheaſants of the plaintiff, and taking away other his goods

and

and chattels. On Not Guilty pleaded, and tried by a ſpecial jury, the defendant was found guilty of breaking and entring the free warren of the plaintiff, and chaſing and hunting one hare, damages 6 d, and not guilty as to the reſidue. It was moved for the plaintiff that he ſhould have full coſts; alledging, that the ſtatute 22 & 23 *C.* 2. (which reſtricts coſts in treſpaſs, where the damages are under 40 s, unleſs the freehold or title to the land came in queſtion) did not extend to this action; in which there could not poſſibly be any queſtion relating to the land, but merely to the franchiſe of free warren: For that act related only to ſuch action of treſpaſs, where ſome injury was done to the land. For the defendant it was anſwered, that it was poſſible the freehold or title to the land might be ſo interwoven with the title to the free warren, that both might come in queſtion. And where the title to the land may come in queſtion, but did not, and the damages are under 40 s, there ſhall be no more coſts than damages.——By the court: The act is confined to ſuch actions of treſpaſs, where the ſoil or land is mentioned in the declaration as the ſubject of the treſpaſs complained of. The right of free warren was not in the contemplation of the legiſlature. In an action merely for breaking free warren, it is impoſſible the title of the ſoil can ever come in queſtion. For tho' both may concur in one perſon, yet the title to the free warren is always collateral to that of the land, for a man may have free warren in another man's land. Beſides, the hare ſo hunted was the perſonal property of the owner of the free warren; and if any injury be done to perſonal property, that will take it out of the ſtatute, and intitle the plaintiff to full coſts. And the rule was made abſolute for taxing full coſts. *Black. Rep.* 1151.

12. By the yearly mutiny acts, if any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, deſtroy any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof, on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5 l to the poor, and the commanding officer upon the place, for every offence committed by any ſoldier under his command, ſhall forfeit 20 s in like manner. And if, upon conviction by the juſtices, and demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two day's pay the ſaid penalties, he ſhall forfeit his commiſſion. Soldiers.

13. Here next followeth the ſtatute of the 33 *H.* 8. c. 6 concerning guns: by which it is enacted as follows; The ſtatute of 33 *H.* 8. concerning guns.

(1) No perſon, except he in his own right, or in the right of his wife, or ſome other to his uſe, have lands, tenements, fees, annuities, or offices, to the yearly value of 100 l, ſhall ſhoot in any croſs bow, hand-gun, hagbut, or demihake, otherwiſe than as hereafter is expreſſed; on pain of 10 l, to be levied and diſpoſed of in any of the three ways hereafter mentioned.

(2) And no perſon, of what eſtate or degree ſoever, ſhall ſhoot in, carry, keep, uſe, or have in his houſe or elſewhere, any hand-gun, not being in the ſtock and gun of the length of one yard; or any hagbut or demihake, not being in the ſtock and gun of the length of three quarters of a yard; on the like pain of 10 l.

(3) And every perſon having 100 l a year as above, may ſeize every ſuch croſs bow; and every ſuch hand-gun, hagbut, and demihake being ſo deficient in length; and he may keep the croſs bow to his own uſe; but he ſhall in 20 days after ſeizure break and deſtroy the hand-guns, hagbuts, and demihakes, on pain of 40 s in like manner, for every gun ſo ſeized, and not broken and deſtroyed; and the ſame ſo broken and deſtroyed he may keep to his own uſe.

(4) And no perſon not being qualified as above, ſhall carry or have in his journey, going or riding in the king's highway or elſewhere, any croſs bow bent, or gun charged, or furniſhed with powder, fire, or touch for the ſame, except in time and ſervice of war; on pain of 10 l in like manner.

(5) And no perſon ſhall ſhoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the ſame, except it be at a butt or bank of earth in place convenient, or for defence of his perſon or houſe; on pain of 10 l in like manner.

(6) And no perſon ſhall command his ſervant to ſhoot in any croſs bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 10 l in like manner.

(7) But all gentlemen, yeomen, and ſervingmen of lords, knights, eſquires, and gentlemen; and all inhabitants of cities, boroughs, and market towns, may ſhoot with any hand-gun, demihake, or hagbut of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every ſuch lord, knight, eſquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have

have and keep in their houſes any ſuch hand-gun, hagbut, or demihake, of the length aforeſaid, to the intent only to uſe or ſhoot in the ſame at a butt or bank of earth.

And every perſon inhabiting in a houſe two furlongs from any city, borough, or town, may keep and have in his houſe, for the only defence of the ſame, hand-guns, hagbuts, and demihakes, of the length abovementioned; and may uſe and exerciſe to ſhoot in the ſame at any butt or bank of earth near to his houſe, and not otherwiſe.

And except makers and ſellers of the ſame, having them for that purpoſe only, and being of the length above.

Alſo this act ſhall not extend to perſons inhabiting within five miles of the ſea; ſo that they ſhoot not at any deer, heron, ſhovelard, pheaſant, partridge, wild ſwine, or wild elk.

Alſo this act ſhall not extend to ſervants carrying the ſame by their maſter's command, ſo that they ſhoot not at any game.

Nor to any owner of a ſhip for having or keeping them, of what length ſoever, to be uſed in the ſhip only.

(Nor to perſons licenſed by the ſeſſions to ſhoot in hand-guns or birding-pieces, at crow, chough, pye, rook, ring-dove, jay, or ſmaller birds, for hawks-meat only; ſo as they ſhoot no game, and ſo that they ſhoot not within 600 paces of a hernery, nor within a hundred paces of a pigeon houſe, nor in another man's park, foreſt, or chaſe. 1 *J.* *c.* 27. *ſ.* 7.

And except the ſheriff, who may carry a gun in the execution of his office. 5 *Co.* 72.)

(8) And if any perſon ſee or find any one offending or doing contrary to this act, he may arreſt, and bring or convey him to the next juſtice of the county where he is found offending; who ſhall upon *due examination and proof* thereof made before him, by his diſcretion have full power to commit (M) the offender to the next gaol, there to remain till ſuch time as the ſaid penalty or forfeiture ſhall be truly contented and paid by the ſaid offender; half to the king, and half to the firſt bringer or conveyer of the ſaid offender to the juſtice.

Which *due examination and proof* aforeſaid, is intended not to be by a jury, but by witneſſes. 1 *Ventr.* 33.

Mr. *Dalton* ſays, foraſmuch as in this caſe the juſtice hath the whole matter committed to himſelf, and the offenders remain convict upon his examination and proof of

witneſs made before him; therefore he ought to be circumſpect in his examination, as alſo in his mittimus; and farther to make a record (N) of the matter, in writing under his hand, and alſo to ſend the eſtreat of it into the exchequer, whereby the king's duty may be levied. *Dalt. c.* 47.

In the conviction, it is not ſufficient to ſay generally that he had not 100 l a year, but the time muſt be certainly alledged, namely, that the defendant on the day and year aforeſaid (when the offence was committed) had not 100 l a year. 3 *Mod.* 280.

And upon ſuch conviction, it hath been adjudged, that a writ of error doth not lie. 1 *Ventr.* 33.

(9) Alſo the juſtices in ſeſſions may inquire of, hear and determine the ſaid offences, ſo that no leſs fine than 10 l be aſſeſſed upon *preſentment* and conviction, to be levied in ſuch caſe to the king's uſe only.

And this may alſo be upon *indictment*. Dalt. c. 47.

And if the jury ſhall wilfully conceal any the ſaid offences, the court may charge another jury to inquire of ſuch concealment; and if it be ſo found, the firſt jury ſhall forfeit to the king every one 20 s.

(10) Alſo the leet may inquire of, hear and determine the ſame; in which caſe, half the forfeiture ſhall upon preſentment and conviction be levied to the king's uſe; and one moiety of the other half to the owner of the leet, by diſtreſs or action of debt; and the other moiety to him that will ſue in any of the king's courts.

And if the jury ſhall wilfully conceal an offence, the ſteward may charge another jury to inquire of the concealment; and if it be found, the firſt jury ſhall forfeit 20 s each; half to the owner of the leet, by diſtreſs or action of debt; and half to him that ſhall ſue in any of the king's courts.

(11) But no perſon ſhall be proſecuted but within a year, if it is by the king; and within a half a year, if by any other perſon. †

V. Laws

† This ſtatute of the 33 *H.* 8. *c.* 6. is undoubtedly in force, and conſequently may be put in execution; nevertheleſs it ſeemeth now to be obſolete, the object thereof being a matter not in any uſe, and the effect of it with reſpect to the game being ſuperſeded as it were by the ſeveral ſubſequent ſtatutes. The original intention was ſolely for the encouragement of the uſe of the long bow. And the progreſs of the matter was as follows:—

By

V. Laws for preſerving the four footed game in particular.

Which ſaid laws, as hath been ſaid, do ſeem to concern all perſons whatſoever, whether qualified or not.

Now

By the ſtatute of the 19 *H.* 7. *c.* 4, it was thus enacted; The king our ſovereign lord conſidering right well, that in the time of his moſt noble progenitors ſhooting in long bows hath been much uſed in this his realm, whereby honour and victory hath been gotten againſt outward enemies, and the realm greatly defended, and much the more dread among all chriſtian princes by reaſon of the ſame; which ſhooting is now greatly decayed in this realm, foraſmuch as now of late the king's ſubjects greatly delight themſelves in uſing of *croſs bows*, whereby great deſtruction of the king's deer, in foreſts, chaſes, and parks, daily is had and done, and ſhooting in long bows little or nothing uſed, and likely in ſhort ſpace to be loſt and utterly decayed, to the great hurt and enfeebling of this realm, and to the comfort of our outward enemies, if remedy be not therefore in due time purveyed; wherefore our ſaid lord the king, willing that his ſubjects in this realm ſhall uſe their long bows after the laudable cuſtom uſed in time of his moſt noble progenitors, to the great honour, ſtrength, and defence of this his realm, by the advice of the lords ſpiritual and temporal and commons in this preſent parliament aſſembled, hath ordained and enacted, That no perſon, without the king's ſpecial licence under his placarde, ſigned and ſealed with his privy ſeal or ſignet, ſhall occupy or ſhoot in any *croſs bow* (unleſs he ſhoot out of an houſe for the lawful defence of the ſame), except he be a lord, or have lands of freehold of 200 marks a year; on pain to forfeit the ſame, with the apparel thereto belonging, to him who ſhall ſeize and take the ſame.—By the 3 *H.* 8. *c.* 13. the qualification was raiſed to 300 marks a year.—Afterwards, when guns came in uſe, it was enacted by the 6 *H.* 8. *c.* 13. as follows: Where the king's ſubjects daily delight themſelves in ſhooting in *croſs bows*, whereby ſhooting in long bows is the leſs uſed, and divers good ſtatutes for reformation of the ſame have been made, and that notwithſtanding many perſons not regarding the penalties of the ſaid ſtatutes, uſe daily to ſhoot in *croſs bows* and *hand-guns*, whereby the king's deer, and of other lords of this his realm are deſtroyed, and ſhall be daily deſtroyed more and more, unleſs remedy therefore be provided; it is enacted, that no perſon ſhall ſhoot in any *croſs bow* or *hand-gun*, on pain of forfeiting the ſame, and alſo 10*l*, unleſs he have by the year to the value of 300 marks; with power to the king to licenſe perſons as before.—And the like was enacted by two other ſtatutes in that king's reign

Now the four footed game, or the game of beaſts, are of three kinds, *viz.*

I. Deer.
II. Hares.
III. Conies.

I. Of deer.

i. Deer ſtealing by ancient ſtatutes.
ii. Deer ſtealing by the 16 G. 3. c. 30.
iii. By the Black *act.*
iv. Deſtroying covert for deer.

i. Deer ſtealing by ancient ſtatutes.

By the 3 *Ed.* 1. *c.* 20. If *treſpaſſers in parks* be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs, and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof,) and then ſhall find good ſurety that after they ſhall not commit the like treſpaſs: and if they have not whereof to make

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(14 & 15 *H.* 8. *c.* 7. and 25 *H.* 8. *c.* 17.) with ſome ſmall variations, not material, repealing the former ſtatutes and the licences granted thereupon, and giving the king power to grant new ones; ſo that they ſeem to have been intended chiefly for the ſake of bringing money into the exchequer by the renewal of licences.—And laſt of all cometh this ſtatute of the 33 *H.* 8. *c.* 6. reciting, Whereas in the parliament holden in the 25th year of the king's moſt gracious reign, one ſtatute was made for the avoiding and eſchewing of ſhooting in *croſs bows* and *hand-guns*; ſince the making whereof divers evil diſpoſed perſons, not only preſuming the violation of the ſaid ſtatute, but alſo of their malicious and evil diſpoſed purpoſes have committed divers deteſtable and ſhameful murders, robberies, felonies, riots, and routs, with *croſs bows*, little ſhort *hand-guns*, and little *haquebuts*, to the great peril and fear of the king's ſubjects; and alſo divers keepers of foreſts, chaſes, and parks, and divers gentlemen, yeomen, and ſerving men, now of late have laid apart the good and laudible exerciſe of the long bow, which always heretofore hath been the ſurety, ſafeguard, and continual defence of this realm of England, and an ineſtimable dread and terror

make fine, after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety, they ſhall

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terror to the enemies of the ſame; and now of late the ſaid evil diſpoſed perſons have uſed, and do daily uſe, to ride and go in the king's highways, and elſewhere, having with them *croſs bows* and little *hand-guns*, ready furniſhed with quarrels, gun-powder, fire, and touch, to the great peril and fear of the king's ſubjects; for reformation thereof, it is enacted (as is above ſet forth).

Subſequent to this, an act was made, 2 & 3 *Ed.* 6. *c.* 14. which is curious enough, to ſhew the progreſs of fire arms applied to the deſtruction of the game; the ſubſtance of which is this: Whereas an act was made in the 33d year of *H.* 8. for ſome liberty to ſhoot in hand-guns, haques, and haquebuts, by which act nevertheleſs it was provided, that no perſon ſhould ſhoot in any of the aboveſaid pieces, but at a bank of earth, and not at any deer or fowl, unleſs the party might diſpend 100l a year, foraſmuch as the ſaid act having been adviſed, as it was then thought, for neceſſary exerciſe, tending to the defence of the realm, is grown ſince to the maintenance of much idleneſs, and to ſuch a liberty, as not only dwelling houſes, dove coats, and churches, be daily damaged by the abuſe thereof, by men of light converſation, but alſo there is grown a cuſtomable manner of ſhooting of *hailſhot*, whereby an infinite ſort of fowl is killed, and much game thereby deſtroyed, whereby alſo the meaning of the ſtatute is defrauded, for that the ſaid uſe of *hailſhot* utterly deſtroyeth the certainty of ſhooting, which in wars is much requiſite; it is therefore enacted, that no perſon, under the degree of a lord of parliament, ſhall ſhoot in any hand-gun within any city or town at any fowl or other mark, upon any church, houſe, or dove coat, nor ſhall any perſon ſhoot in any place any *hailſhot*, or any more pellets than one at a time; on pain of 10l and impriſonment for 3 months.

This act continued in force until the 6 & 7 *W.* *c.* 13. which enacts, Whereas by an act made in the 2 & 3 *Ed.* 6. it was ordained, that no perſon under the degree of a lord of parliament ſhould ſhoot in any place any hailſhot, or any more pellets than one at one time, on pain of 10l, and impriſonment for 3 months; which act, however uſeful in thoſe days, hath not for many years laſt paſt been put in execution, but become uſeleſs and unneceſſary; yet nevertheleſs ſeveral malicious perſons have of late proſecuted ſeveral gentlemen, qualified to keep and uſe guns, upon the ſaid act; for remedy whereof, be it enacted, that the ſaid act ſhall be and is hereby repealed.

But the aforeſaid act of the 33 *H.* 8. *c.* 6. continues in force, although the object thereof doth not now exiſt.

abjure

abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit.

Treſpaſſers] This is, when a man either chaſeth in a park, or endeavours to kill ſome of the game thereof. 2 *Inſt.* 199.

In parks] This act, becauſe it is very penal, is to be underſtood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are required, 1. A liberty, either by grant or preſcription, 2. Incloſure, by pale, wall or hedge. And, 3. Beaſts ſavages of the park. 2 *Inſt.* 199.

By the 21 *Ed.* 1. *ſt.* 2. intitled *De malefactoribus in parcis*, If any foreſter or parker, ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do continue their malice, and diſobeying the king's peace do flee, or defend themſelves with force and arms, altho' ſuch foreſter, parker, or their aſſiſtants, do kill ſuch offenders, they ſhall not be troubled upon the ſame.

By the 1 *H.* 7. *c.* 7. When information ſhall be made, of any unlawful hunting, in any foreſt or park, by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon to be ſuſpected thereof, he may make a warrant to take and arreſt the perſon, and to have him before the maker of the warrant, or any other of the ſaid counſel, or juſtices of the peace; who may by their diſcretion examine him of the ſaid hunting, and of the ſaid doers in that behalf: And if the ſame perſon *wilfully conceal* the ſaid huntings, or any perſon with him defective therein, that then the ſame concealment be, againſt every ſuch perſon ſo concealing felony. But if he then confeſs the truth, and all that he ſhall be examined of and knoweth in that behalf, then the ſaid offences of hunting by him done, ſhall be but treſpaſs fineable at the next general ſeſſions. And if any reſcous or diſobeyſance be made to any perſon having authority to execute the warrant, by any perſon which ſo ſhould be arreſted, ſo that the execution of the warrant thereby be not had, then the ſaid reſcous and diſobeyſance ſhall be felony. And if any perſon ſhall be convict of any ſuch huntings, with painted faces, vizors, or otherwiſe diſguiſed, to the intent they ſhould not be known, or of unlawful hunting in time of night, then the ſame

perſon ſo convict, to have like punition as he ſhould have if he were convict of felony.

When information ſhall be made] This information muſt ſhew at leaſt juſt cauſe of ſuſpicion; and it muſt be taken in writing, becauſe it is the ground of the warrant. 3 *Inſt. c.* 21.

In any foreſt or park] This doth not extend to a chaſe, nor to any foreſt or park in uſe or reputation, which are not ſo in law. 3 *Inſt. c.* 21.

Wilfully conceal] Lord *Coke*, who is a lover of the common law, and is jealous of every violation of it, ſeemeth to be out of humour with this act, and calls it an ill-penned law. He obſerves it was the firſt that was made for the making of any hunting felony, againſt that excellent and equal branch of *charta de foreſta*, *nullus de cætera vitam vel membra amittat pro venatione noſtra*; and that this, and other old ſtatutes concerning the foreſt, are called the good old laws and cuſtoms, and commanded to be obſerved; and therefore this new act is too ſevere for wild beaſts, whereof there can be no felony at the common law. And therefore the judges (he ſays) have made a favourable conſtruction of it, as is ſet forth in the following notable report:

M. 19 & 20 *El.* in the king's bench. *Gerrard* the queen's attorney general (who was a grave and reverend man) ſaid openly, that it had been reſolved by the judges upon this ſtatute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth *conceal* it, yet this is upon the conſtruction of the whole act no felony. For the firſt clauſe concerning the concealment, and the laſt clauſe concerning the fact itſelf, muſt be coupled or joined by conſtruction together; that is to ſay, If any perſon be convict of ſuch hunting with painted face, or of unlawful hunting in the night, this conviction muſt be upon not guilty pleaded; which the judges expounded to be the concealment intended in the firſt branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counſel or a juſtice of the peace, which may lie in averment, ſo as before it be felony he muſt be convicted of ſuch hunting upon not guilty pleaded firſt, and after ſuch conviction, then he muſt be indicted again upon the whole matter, that he felonioufly did conceal it, againſt the form of the ſtatute; and if the offender upon the firſt indictment confeſſeth

confeſſeth the indictment, then it is ſuch a judicial confeſſion as this act intendeth, and no felony within this ſtatute.

This he ſays, he heard the attorney report, and did then obſerve it; which concurring with his opinion, he thought good to publiſh, and the rather becauſe in *Lambard*'s juſtice, amongſt his precedents of indictments, there is an erroneous precedent (he ſays) of an indictment of felony for the concealment upon the examination before a juſtice of the peace. And upon the whole he thinks it the cleareſt way to make it treſpaſs, and not felony; which the party may do at his pleaſure. 3 *Inſt.* *c.* 21.

But Lord *Hale* ſays, that this ſeems a difficult expoſition; for upon his arraignment for the hunting, he only anſwers to that indictment, and is not examined touching others; and beſides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convict of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how ſhall there be evidence to convict him of the concealment? 1 *H. H.* 659.

By the 1 *J.* *c.* 27. Every perſon who ſhall *ſell*, or buy to ſell again, any deer, ſhall on conviction at the aſſizes, or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every deer 40 s, half to him that will ſue, and half to the poor.

By the 5 *G.* *c.* 28. If any perſon ſhall enter into any park, paddock, or other incloſed ground where deer are uſually kept, and wilfully wound or kill any red or fallow deer there, without conſent of the owner of the ground, or of the perſon intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein; and ſhall be convicted thereof before the judge of aſſize, upon indictment, by verdict or confeſſion,——he ſhall be tranſported for ſeven years.

ii. Deer ſtealing by the 16 G. 3. c. 30.

By the 16 *G.* 3. *c.* 30. (which repeals in whole or in part nine former acts relating to this ſubject) it is enacted as follows:

Penalty of killing or attempting to kill.

1. If any perſon ſhall courſe or hunt, or ſhall take in any ſlip, nooſe, toyle, or ſnare, or ſhall kill, wound, or deſtroy, or ſhall ſhoot at, or otherwiſe attempt to kill wound or deſtroy, or ſhall carry away, any red or fallow deer,

deer, in any foreſt, chaſe, purlieu, or ancient walk, whether incloſed or not, or in any incloſed park, paddock, wood, or other incloſed ground, where deer are, have been, or ſhall be uſually kept; without the conſent of the owner, or without being otherwiſe duly authorized; or ſhall be aiding, abetting, or aſſiſting therein or thereunto: Every perſon ſo offending, by courſing, hunting, ſhooting at, or otherwiſe attempting to kill, wound, or deſtroy, or by aiding therein or thereunto, ſhall forfeit for every ſuch offence the ſum of 20l; and every perſon ſo offending by killing, wounding, or deſtroying, or by taking in any ſlip, nooſe, toyle, or ſnare, or by carrying away, or by aiding therein reſpectively, ſhall for every deer ſo wounded, killed, deſtroyed, taken, or carried away, forfeit the ſum of 30l. *ſ.* 1.

And if the offender ſhall be a keeper of or intruſted with the cuſtody or care of ſuch deer, he ſhall forfeit double. *Id.*

And if any perſon, after having been convicted of any of the aforeſaid offences, ſhall offend a ſecond time; ſuch ſecond offence, whether it be the ſame as the firſt offence, or be any other of the aforeſaid offences, ſhall be adjudged felony, and the offender, being lawfully convicted upon indictment, ſhall be tranſported to one of his majeſty's plantations in *America* for ſeven years. *Id.*

And if any offender, who hath been convicted under any of the former acts, ſhall again commit any of the aforeſaid offences againſt this act; he ſhall, on proof of ſuch former conviction, be adjudged to have committed a ſecond offence, in like manner as if ſuch former conviction had been made under the proviſions of this act. *ſ.* 2.

And for the more ready conviction of perſons for a ſecond offence, the juſtice before whom he ſhall be convicted for the firſt offence ſhall tranſmit the conviction to the next ſeſſions, to be there filed amongſt the records; and ſuch conviction ſo filed, or a true copy thereof certified and ſubſcribed by the clerk of the peace, ſhall be ſufficient evidence to prove the conviction of ſuch firſt offence. *ſ.* 3.

2. It ſhall be lawful for one juſtice, on complaint to him made on oath by any credible perſon, that there is reaſon to ſuſpect any perſon of having in his cuſtody or poſſeſſion, or in any dwelling houſe, out-houſe, yard, garden, or place, any red or fallow deer which ſhall have been unlawfully killed, or the head, ſkin, or other part thereof, or any ſlip, nooſe, toyle, ſnare, or other engine, for

Warrant to ſearch.

for the unlawful taking of deer,——by his warrant (O) to cauſe ſuch perſon, and ſuch dwelling houſe, out-houſe, garden, or place to be ſearched; and if any ſuch ſhall be found, to cauſe the ſame, and ſuch perſon ſo having poſſeſſion, or in whoſe dwelling houſe, outhouſe, garden, or other place, the ſame ſhall be found, to be brought before any juſtice having juriſdiction: And if ſuch perſon ſhall not produce before ſuch juſtice the party of whom he received the ſame, or ſatisfy ſuch juſtice that he came lawfully by ſuch deer, or the head, ſkin, or other part thereof, or had a lawful occaſion for ſuch ſlip, nooſe, toyle, ſnare, or other engine, or did not keep the ſame for any unlawful purpoſe; he ſhall forfeit not exceeding 30 l, nor leſs than 10 l, at the diſcretion of ſuch juſtice. ſ. 4.

And if any red or fallow deer ſuſpected to have been unlawfully killed, or the head, ſkin, or other part of ſuch deer, ſhall, on ſearch under a warrant from a juſtice, be found in the poſſeſſion or cuſtody of any perſon, or in any dwelling, houſe, outhouſe, garden, or other place, or ſhall be proved to have been in the poſſeſſion, houſe, outhouſe, garden, or place, of any perſon who may be juſtly ſuſpected to have come diſhoneſtly or unlawfully by the ſame as aforeſaid; and ſuch perſon ſo in poſſeſſion, or the owner or occupier of ſuch dwelling houſe, outhouſe, garden, or other place, ſhall not, under the proviſions aforeſaid, be liable to conviction; in ſuch caſe, for the diſcovery of the party who actually killed or ſtole ſuch deer, it ſhall be lawful for any juſtice having juriſdiction, as the evidence given and the circumſtances of the caſe ſhall require, to ſummon before him every perſon through whoſe hands ſuch deer, or the head, ſkin, or other part thereof, ſhall appear to have paſſed; and if the perſon from whom ſuch deer, or the head, ſkin, or other part thereof, ſhall appear to have been firſt received, or who having had poſſeſſion thereof, ſhall not give proof to the ſatisfaction of ſuch juſtice, that he came lawfully by the ſame, ſuch perſon ſhall, on every conviction, forfeit not exceeding 30 l, nor leſs than 10 l. ſ 5.

And if it ſhall appear on the oath of one witneſs, that any perſon hath, or hath had, in his poſſeſſion, houſe, outhouſe, garden, or place, any red or fallow deer, or the ſkin, head, or other part thereof, and ſhall be reaſonably ſuſpected to have come diſhoneſtly or unlawfully thereby; every ſuch perſon, and all others through whoſe hands the ſame ſhall appear to have paſſed under the like ſuſpicion, may be proceeded againſt in like manner and form, and

and on conviction ſhall be ſubject and liable to the ſame penalty, as if ſuch deer, or the head, ſkin, or other part thereof had been found in the poſſeſſion, houſe, outhouſe, garden, or place of ſuch perſon, on ſearch made by warrant as aforeſaid. *ſ.* 6.

Setting nets or ſnares.

3. If any perſon ſhall ſet, lay, or uſe, any net, wire, ſlip, nooſe, toyle, or other engine, for the purpoſe of taking or killing deer, within or upon any foreſt, chaſe, purlieu, or ancient walk, or in the ring or outer fence or bank dividing the ſame from the adjoining lands; or in any incloſed park, paddock, wood, or ground, where deer are, have been, or ſhall be uſually kept (ſuch perſon not being the owner of ſuch foreſt, chaſe, purlieu, ancient walk, park, paddock, wood, or ground, or intruſted with the care of the deer within the ſame), and ſhall be convicted of any ſuch offence; he ſhall forfeit for the firſt offence not exceeding 10 l nor leſs than 5 l, and for every other offence any ſum not exceeding 20 l nor leſs than 10 l. *ſ.* 7.

Pulling down pales or other fences.

4. If any perſon ſhall wilfully pull down or deſtroy, or cauſe to be willfully pulled down or deſtroyed, the pale or pales, or any part of the walls, of any foreſt, chaſe, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer ſhall be then kept, without the conſent of the owner or perſon chiefly intruſted with the cuſtody thereof, or being otherwiſe duly authorized; he ſhall be ſubject to the forfeiture hereby inflicted for the firſt offence of killing any deer. *ſ.* 8.

Seizing of dogs, guns, or other engines.

5. If any perſon, carrying any gun or other fire arms, or any ſword, ſtaff, or other offenſive weapon, ſhall come into any foreſt, chaſe, purlieu, or ancient walk, or into any incloſed park, paddock, wood, or into any other ground where deer are uſually kept, be the ſame incloſed or not incloſed, with an intent unlawfully to ſhoot at, courſe, or hunt, or to take in any ſlip, nooſe, toyle, ſnare, or other engine, or to kill, wound, deſtroy, or take away, any red or fallow deer; it ſhall be lawful for the ranger or keeper or perſon intruſted with the care of ſuch deer to ſeize and take from ſuch perſon, in and upon ſuch foreſt, chaſe, purlieu, ancient walk, park, paddock, wood, or other ground, for the uſe of the owner thereof reſpectively, all ſuch guns, fire arms, ſlips, nooſes, toyles, ſnares, or other engines, and all dogs there brought for courſing deer, in like manner as the gamekeepers of manors are impowered by law within their reſpective manors, to ſeize and take dogs, nets, or other engines, in the cuſtody of perſons not qualified by law to keep the

ſame. And if any ſuch perſon ſhall there unlawfully beat or wound any ranger or keeper, or his ſervants or aſſiſtants in the execution of their office, or ſhall attempt to reſcue any perſon in the lawful cuſtody of any ſuch ranger, keeper, ſervant, or aſſiſtant; he ſhall be guilty of felony, and being convicted on indictment ſhall be tranſported to one of his majeſty's plantations in *America* for ſeven years. *ſ.* 9.

Apprehending offenders.

6. On complaint or information (P) on oath of one witneſs before one juſtice, of any offence againſt this act; ſuch juſtice (except in ſuch caſes only where the juſtice is ſpecially directed previouſly to ſummon the party before him) may by his warrant (Q) cauſe the party complained of to be apprehended and brought before him, at ſuch time and place as ſhall be ſpecified in ſuch warrant: And thereupon ſuch juſtice may proceed to hear and determine the matter of ſuch complaint.——And in caſe where it is provided by this act, that the party complained of ſhall be ſummoned to appear; if the party ſo ſummoned ſhall not appear, then on proof of the ſervice of ſuch ſummons, either perſonally, or by leaving the ſame at his dwelling houſe, lodgings, or other uſual place of abode, it ſhall be lawful for the juſtice to apprehend him by warrant, and to proceed as if no previous ſummons had been directed by this act. *ſ.* 10.

And it ſhall be lawful for any keeper or under-keeper, and their ſervants or aſſiſtants, to ſeize and apprehend upon the ſpot any perſon whom they ſhall diſcover in the actual fact of hunting, courſing, killing, wounding, ſhooting at, taking, deſtroying, or carrying away, any red or fallow deer, from any foreſt, chaſe, purlieu, or ancient walk, whether incloſed or not, or in any incloſed park, paddock, wood, or in any other incloſed ground, or attempting ſo to do; or in ſetting or laying any net, wire, ſlip, nooſe, toyle, ſnare, or other engine therein, for the taking, killing, or deſtroying of deer; and to carry ſuch offender before ſome neighbouring juſtice, to be dealt with according to law. *ſ.* 15.

Levying of penalties.

7. The pecuniary penalties on this act may be recovered before one juſtice, on the oath of one witneſs or confeſſion; half to the king to be paid for his uſe into the hands of ſuch perſon as the juſtice ſhall direct, and half to the informer. And in caſe of non-payment thereof, with the charges incident to the conviction, immediately upon the conviction, the ſame ſhall be levied by warrant of ſuch juſtice by diſtreſs (R); and for want of ſufficient diſtreſs (S), the offender, except in ſuch caſes where it is otherwiſe provided by this act, ſhall

be committed (T) to the common gaol for one whole year, unleſs the ſaid penalty and charges ſhall be ſooner paid. *ſ.* 11.

And if upon conviction he doth not immediately pay the penalty, the juſtice may order him into cuſtody during ſuch time, not exceeding three days, as ſuch juſtice ſhall think proper to allow for return of the warrant of diſtreſs. *ſ.* 12.

Provided, that if it ſhall appear to the ſatisfaction of ſuch juſtice, either by confeſſion of the party or otherwiſe, that he hath not goods or chattels ſufficient whereon to levy the penalty; the juſtice may, without iſſuing any warrant of diſtreſs, commit the party convicted, as if a warrant of diſtreſs had been iſſued, and a *Nulla Bona* returned thereon. *ſ.* 13.

Provided alſo, that if any perſon committed for any firſt offence againſt this act ſhall, before his commitment to priſon, procure ſecurity to be given by two ſufficient ſureties, to the ſatisfaction of ſuch juſtice, for payment of the penalty with the charges incident, within ſix days, incluſive of the day of conviction; the juſtice may accept of ſuch ſecurity, and on non-payment thereof at the time, may cauſe the party and his ſaid ſureties to be apprehended by warrant, and commit them to the common gaol, for ſuch time as the party convicted was liable to have been impriſoned if no ſuch ſecurity had been given, unleſs the penalty *or* † charges ſhall be ſooner paid. *ſ.* 14.

Finally; If any offender for his firſt offence be committed for want of ſufficient diſtreſs, and ſhall, whilſt in gaol, obtain the conſent in writing of the proſecutor, and alſo of the owner, ranger, foreſter, keeper, or other perſon chiefly intruſted with the care of the deer in the foreſt or other place, for his enlargement; the juſtices in ſeſſions may cauſe him to be brought before them, and by their order may direct the gaoler to ſet him at liberty. *ſ.* 16.

8. If any offender ſhall make diſcovery of any other offender, ſo as he be convicted; he ſhall be diſcharged of all the penalties of this act by him incurred previous to ſuch diſcovery. *ſ.* 17. Offender informing.

 9. The

† The word *or* ſeems here to be by miſtake inſerted, inſtead of the word *and*. For as the clauſe now ſtands, it ſeemeth that the parties may be diſmiſſed on payment of the charges only.

Conviction.

9. The conviction ſhall be fairly written on parchment or paper, in the following form of words, or any other form to the like effect:

BE *it remembred, that on the* ——— *day of* ——— *in the year* —— A. O. *was, upon the complaint of* A. I. *convicted before* ——— *of the juſtices of the peace, for* ——— *in purſuance of an act paſſed in the ſixteenth year of the reign of his majeſty king* George *the third, for* ——— (as the caſe ſhall be). *Given under my hand and ſeal, the day and year abovewritten.* ſ. 18.

And the ſame ſhall be certified to the next ſeſſions, to be there filed amongſt the records. *Id.*

Certiorari.

10. No certiorari ſhall be allowed to remove any conviction or other proceedings on this act, unleſs the party convicted ſhall, before the allowance of ſuch certiorari, become bound to the proſecutor in 100l, with ſufficient ſureties as the juſtice before whom the offender was convicted [ſhall approve of *], with condition to pay to the proſecutor within thirty days after ſuch conviction confirmed, *on* † a Procedendo granted, his full coſts and damages to be aſcertained upon his oath;—and ſhall alſo become bound to the juſtice before whom the conviction was made, with ſuch ſufficient ſureties as the juſtice ſhall approve of, in the penalty of 60 l, with condition to proſecute ſuch writ of certiorari with effect, and to pay to the juſtice the forfeiture to be diſtributed as by this act is directed, or to render to the juſtice ſuch perſon convicted, within thirty days after the conviction ſhall be confirmed, or a Procedendo granted: And in default thereof, it ſhall be lawful to proceed to levy the penalty, as if no certiorari had been awarded. ſ. 19.

And after confirmation of the conviction by any of the ſuperior courts at Weſtminſter, and delivering to the juſtice the rule whereby the conviction hath been confirmed, he may proceed againſt the party in the ſame manner as if a Procedendo had been granted. ſ. 20.

But by a ſubſequent clauſe in the ſaid act, it is enacted, that no conviction ſhall be removed or removable by certiorari, or any other writ or proceſs whatſoever, into any

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* Theſe three words, or ſome ſuch like, are neceſſary to compleat the ſenſe; having been omitted probably out of the ſtatute by miſtake.

† So the ſtatute: The word *on* ſhould be *or*.

any of his majeſty's courts of record at Weſtminſter; any law or ſtatute to the contrary notwithſtanding. *ſ.* 23.

[How far theſe ſeemingly contradictory clauſes are reconcileable, or whether either, or which of them, is in force, may afford matter of attentive conſideration.—Indeed, there ſeems to be a fatality attending theſe game laws; ſeveral of the moſt conſiderable of them not having been digeſted with that care and preciſion which may be deemed requiſite, eſpecially in caſes penal. And in the preſent caſe, the rolls have been conſulted; and every one of the miſtakes here ſpecified are to be found in the original roll: otherwiſe ſome of them might have been ſuppoſed to be only errors of the preſs.]

11. If any perſon ſhall think himſelf aggrieved by the determination of the juſtice, and ſhall not have ſought his remedy by removing the matter by certiorari as aforeſaid, he may appeal to the general or quarter ſeſſions next after the expiration of twenty days from the time of the conviction; giving to the proſecutor ſix days notice in writing, of his intention of bringing and proſecuting ſuch appeal, and of the matter thereof; and entring into recognizance before a juſtice, with two ſufficient ſureties to be approved by the ſaid juſtice on *conviction*† to appear and try the appeal at ſuch ſeſſions, and to abide by the order or determination of ſuch court, and for payment of ſuch coſts and charges as ſhall be awarded at the ſaid court. And if the conviction ſhall be there affirmed, the appellant ſhall pay to the proſecutor his full coſts, to be aſcertained by order of the ſaid court. *ſ.* 21. Appeal.

Provided, that if any perſon, thinking himſelf aggrieved as aforeſaid, ſhall have paid the penalty, or ſhall be then impriſoned; he may appeal againſt ſuch conviction as aforeſaid, on entring into recognizance by himſelf only without ſurety, conditioned as before mentioned; the ſaid penalty remaining in the hands of ſuch juſtice, or ſuch perſon continuing in priſon in the mean time, and until the merits of the appeal ſhall be determined. *ſ.* 22.

Provided alſo, that no conviction ſhall be ſet aſide by the ſaid ſeſſions for want of form, or for want of ſtating, or through the mis-ſtating of any facts, circumſtances, or matter whatſoever, in caſe the facts alledged in the conviction, or on which the ſame ſhall be grounded,

† This word, as it ſeemeth, ſhould be *condition*.

ſhall be proved to the ſatisfaction of the court; but the appeal ſhall be decided on the merits of the caſe only. *ſ.* 23.

In what time proſecutions to commence.

12. Proſecutions on this act ſhall be commenced within twelve calendar months from the time of the offence committed, and not afterwards. *ſ.* 25.

iii. By the Black *act.*

By the 9 *G. c.* 22. (commonly called the *Waltham Black act*, occaſioned by the devaſtations made in *Epping* foreſt near *Waltham*, by perſons in diſguiſe, or with their faces blacked) If any perſon or perſons, being armed with ſwords, fire arms, or other offenſive weapons, and having his or their faces blacked, or being otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park, paddock, or grounds incloſed with any wall, pale, or other fence, wherein any deer have been or ſhall be uſually kept, or ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer: or if any perſon or perſons (whether armed and diſguiſed or not) ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of the king's foreſts or chaſes, which are or ſhall be incloſed with pales, rails, or other fences; or in any park, paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon, for any the ſaid offences; or ſhall by gift or promiſe of money, or other reward, procure any to join him or them in any ſuch unlawful act: every perſon ſo offending, being thereof lawfully convicted (in any county in *England*) ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to juſtice, and other particulars relating thereto, it is proper to refer from hence to the title *Black Act*; where theſe offences, together with the other offences in the ſaid act, are treated of more at large.

iv. Deſtroying covert for deer.

By the 28 *G.* 2. *c.* 19. Whereas the burning and deſtroying of goſs, furze, and fern in foreſts and chaſes, doth deſtroy the cover neceſſary for the preſervation of the deer and game there; therefore if any perſon not having

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ing a right or legal licence to do the ſame, ſhall ſet fire to, burn, or deſtroy (or be aiding therein) any goſs, furze, or fern in any foreſt or chaſe, without conſent of the owner or perſon chiefly intruſted with the cuſtody of ſuch foreſt or chaſe, or of ſome part thereof, and being brought before a juſtice ſhall be thereof convicted by confeſſion, or oath of one witneſs, or on view of the juſtice, he ſhall forfeit not exceeding 5 l, nor leſs than 40s, half to the informer, and half to the poor; if not forthwith paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be found, the juſtice ſhall commit him to the common gaol, for any time not exceeding three months, nor leſs than one month.

II. Of hares.

It is to be remembred, that I have already, under the third part of this title, treated of thoſe particulars, which are common to this with other ſpecies of the game, as to deſtroying the ſame by unqualified perſons; I here take notice of ſuch things as belong to hares only, and which for the moſt part ſeem generally to concern all perſons, whether qualified or not.

Tracing in the ſnow.

1. No perſon, of what eſtate, degree, or condition he be, ſhall trace, deſtroy, and kill any hare in the ſnow, with any dog, bitch, bow, nor otherwiſe. And the ſeſſions or leet may inquire thereof; and after inquiſition found, they ſhall for every hare ſo killed, ceſs upon every offender 6s 8d, to be forfeited to the king, if in the ſeſſions; and to the lord of the leet, if in the leet. 14 & 15 *H.* 8. *c.* 10.

And by the 1 *J.* *c.* 27. Every perſon who ſhall trace or courſe any hares in the ſnow; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs he pay to the churchwardens for the uſe of the poor, 20s for every hare; or after one month after his commitment become bound by recognizance with two ſureties in 20 l apiece, before two juſtices, not to offend again in like manner. *ſ.* 2.

Snares and harepipes.

2. And by the ſaid laſt mentioned act, every perſon who ſhall at any time take or deſtroy any hares, with harepipes, cords, or any ſuch inſtruments or other engines; ſhall forfeit for every hare 20s in like manner. 1 *J.* *c.* 27. *ſ.* 2.

And by the 22 & 23 *C.* 2. *c.* 25. *ſ.* 6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares,

harepipes, or other like engines, and ſhall be thereof convicted, by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; he ſhall give to the party injured ſuch damages, and in ſuch time, as the juſtice ſhall appoint, and ſhall pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10s, as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month.

Killing hares in the night, or on Sunday or Chriſtmaſs day.

3. By the 9 *An. c.* 25. If any perſon whatſoever ſhall take or kill any hare in the night time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5l, half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. *ſ.* 3.

And by the 13 *G.* 3. *c.* 80. If any perſon ſhall knowingly and wilfully kill, take, or deſtroy, or uſe any gun, dog, ſnare, net, or other engine, with intent to kill, take or deſtroy, any hare in the night, that is to ſay, between the hours of 7 at night and 6 in the morning from the 12th day of October to the 12th day of February, and between the hours of nine at night and 4 in the morning from the 12th day of February to the 12th day of October; or, in the day time, upon a Sunday or Chriſtmaſs day: he ſhall, on conviction on oath of one witneſs before one juſtice, forfeit for the firſt offence not exceeding 20l, nor leſs than 10l; and for the ſecond offence not exceeding 30l, nor leſs than 20l. And the juſtice ſhall cauſe the conviction to be made out in the manner and form following: *Be it remembred, That on the —— day of ——— in the year of our Lord ———* A. B. *is convicted before me ——— one of his majeſty's juſtices of the peace for the county of ———* (ſpecifying the offence, with the time and place where the ſame was committed, and alſo ſpecifying that it was the firſt or ſecond offence againſt this act, as the caſe ſhall be). *Given under my hand and ſeal the day and year aforeſaid.* Which conviction the ſaid juſtice ſhall cauſe to be fairly written on parchment, and returned to the next ſeſſions to be filed by the clerk of the peace; who ſhall, upon application to him made, deliver copies thereof, on payment of 1s for each copy.

But in caſe any information ſhall be made upon oath as aforeſaid before a juſtice againſt an offender, and it ſhall appear that ſuch offender hath already been convicted of a firſt and ſecond offence; in ſuch caſe the juſtice ſhall

ſhall commit him to the common gaol or houſe of correction till the next general quarter ſeſſions, unleſs he ſhall have entred into recognizance with two ſufficient ſureties to appear at ſuch ſeſſions, then and there to be tried by indictment for the ſaid offence; and ſuch juſtice ſhall alſo bind over the informer to proſecute the ſaid offender by indictment as aforeſaid: And if upon ſuch indictment, the offender ſhall be convicted; he ſhall forfeit and pay in court the ſum of 5ol; and if he ſhall neglect or refuſe to pay the ſame, he ſhall be committed to the common gaol or houſe of correction for not leſs than 6 nor more than 12 calendar months, unleſs ſuch penalty ſhall be ſooner paid; and the ſaid offender ſhall, if the juſtices think proper, be once publickly whipped at the expiration of ſuch commitment, in the town or place where ſuch gaol or houſe of correction ſhall be, between the hours of twelve and one in the day.

Provided, that no proceedings ſhall be upon this act, unleſs information on oath be made before a juſtice, within one calendar month after the offence committed.

The ſaid forfeitures for the firſt and ſecond offence, and alſo for the third offence on conviction at the ſeſſions, together with the coſts and charges previous to and attending ſuch conviction (to be aſcertained by the juſtice or juſtices before whom the offender ſhall be convicted), ſhall be forthwith paid, half to the informer and half to the poor. And if ſuch perſon ſhall refuſe or neglect to pay the ſame, or to give ſecurity for the payment thereof, ſuch juſtice or juſtices ſhall by their warrant cauſe the ſame to be levied by diſtreſs: And the ſaid juſtice or juſtices may order ſuch offender to be detained in ſafe cuſtody, until return may conveniently be had to the warrant of diſtreſs, unleſs the party ſhall give ſufficient ſecurity, by recognizance or otherwiſe to the ſatisfaction of ſuch juſtice or juſtices, for his appearance before the ſaid juſtice or juſtices on the day appointed for the return of the ſaid warrant, not exceeding 7 days from the taking ſuch ſecurity: And if upon ſuch return, no ſufficient diſtreſs can be had, the ſaid juſtice or juſtices ſhall commit the offender to the common gaol or houſe of correction for 3 calendar months, unleſs the forfeiture ſhall be ſooner paid; or until ſuch offender, thinking himſelf aggrieved by ſuch conviction, ſhall give notice to the informer, that he intends to appeal to the next ſeſſions, and ſhall enter into a recognizance before a juſtice with two ſufficient ſureties, conditioned to try ſuch appeal, and to abide the order of, and pay ſuch coſts as ſhall be awarded by

by the juſtices at ſuch ſeſſions; which notice ſhall be not leſs than 14 days before the trial of the appeal. And the juſtices at ſuch ſeſſions, on proof of ſuch notice and recognizance, ſhall determine the appeal in a ſummary way, and award coſts to either party as they ſhall judge proper.

And if the offender dwells in another county, the juſtice or juſtices before whom the information or indictment was made, may direct their warrant of apprehenſion and of diſtreſs to any conſtable where the offence was committed, to be by him carried to a juſtice near reſiding where the offender dwells, to be ſigned by him on the back of the ſaid warrant, upon proof on oath of the handwriting of the juſtice who firſt granted the warrant; which indorſement ſhall be ſufficient authority for the conſtable of the place where he dwells, or where his goods and chattels are, or for the conſtable who brings the warrant to be indorſed, to apprehend and convey the offender before the juſtice who firſt granted the warrant or any other juſtice of that county where the offence was committed, or for ſuch conſtable to levy the penalty by diſtreſs; and alſo, in caſe where no ſufficient diſtreſs can be had, to convey the offender before the juſtice who firſt granted the warrant of diſtreſs or any other juſtice of that county where the offence was committed, to be dealt with according to law. And the juſtice who indorſed the warrant ſhall direct the conſtable or other perſon making the diſtreſs, to deliver over the money levied to the juſtice who firſt granted the warrant; and if ſuch conſtable or other perſon ſhall neglect or refuſe to pay ſuch ſum, or deliver over all proceedings upon ſuch diſtreſs or warrant of apprehenſion, the juſtice who firſt granted the warrant, or the juſtice who indorſed it, may commit him to the common gaol or houſe of correction for ſix months, or till the money ſhall be paid, and the proceedings delivered over.

And no order made, or any other proceedings upon this act, ſhall be quaſhed for want of form, or removed by certiorari or other writ into any of the courts of record at Weſtminſter.

[Note, in reſpect to the third offence, here ſeems to be an inconſiſtency. The former part of the act ſays, if the offender ſhall not, upon conviction by indictment at the ſeſſions, pay in court the penalty of 50 l; he ſhall be committed to the gaol or houſe of correction for not leſs than 6 months nor more than 12.——The latter part of the act ſays, the ſaid penalty ſhall be levied by diſtreſs;

diſtreſs; and if no diſtreſs can be had, the offender ſhall be committed to the gaol or houſe of correction for *three* months; with power of appealing to the ſeſſions then next following; with other circumſtances ſeemingly abſurd.]

Shooting hares.

4. Every perſon who ſhall ſhoot at, kill, or deſtroy any hare, with any gun or bow, ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor 20 s for every hare; or after one month after his commitment become bound by recognizance with two ſureties before two juſtices in 20 l apiece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Buying and ſelling hares.

5. Every perſon who ſhall ſell, or buy to ſell again, any hare, ſhall, on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every hare 10 s, half to the poor, and half to him that will ſue. 1 *J. c.* 27. *ſ.* 4.

Taking hares in warrens.

6. By the Black Act beforementioned, if any perſon, armed and diſguiſed, ſhall appear in any warren or place where hares are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for either of the ſaid offences, or procure any to join with him in any ſuch unlawful act; he ſhall be guilty of felony without benefit of clergy.

III. Conies.

Treſpaſſers in warrens may be reſiſted.

1. If any warrener ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do flee, or defend themſelves; although the warrener or his aſſiſtant, do kill ſuch offenders, they ſhall not be troubled upon the ſame. 21 *Ed.* 1. *ſt.* 2.

Hunting in a warren by night or diſguiſed.

2. When information ſhall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon ſuſpected, he may make a warrant to bring ſuch perſon before himſelf or any other of the ſaid counſel or juſtices; and if ſuch perſon ſhall conceal the ſaid hunting or any of his accomplices, it ſhall be felony; but if he confeſſeth,

confeſſeth, it ſhall be but treſpaſs finable at the ſeſſions. 1 *H.* 7. *c.* 7.

Hunting by night in a warren incloſed.

3. If any perſon ſhall in the night time enter into any grounds incloſed, and uſed for keeping of conies, and hunt, drive out, take, or kill any conies; he ſhall, on conviction at the ſuit of the king or of the party, at the aſſizes or ſeſſions, on indictment, bill, or information, or otherwiſe, be impriſoned 3 months, and pay to the party grieved treble damages and coſts, and find ſureties for his good abearing for ſeven years, or continue in priſon till he does: But this ſhall not extend to any grounds to be incloſed and uſed for conies after the making of this act, without the king's licence. 3 *J.* *c.* 13.

Killing in places incloſed or uninclоſed, by night or day.

4. If any perſon ſhall at any time enter wrongfully into any warren or ground lawfully uſed or kept for the breeding or keeping of conies, whether it be incloſed or not; and there ſhall chaſe, take, or kill any conies; and ſhall be thereof convicted in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs; he ſhall yield to the party grieved treble damages and coſts, and be impriſoned 3 months, and after till he find ſureties for his good abearing. 22 & 23 *C.* 2. *c.* 25. *ſ.* 4.

If by night, further penalty of tranſportation.

5. If any perſon ſhall wilfully and wrongfully, in the night time, enter into any warren or grounds lawfully uſed or kept for the breeding or keeping of conies, altho' the ſame be not incloſed, and ſhall then and there wilfully and wrongfully take or kill, in the night time, any coney, againſt the will of the owner or occupier thereof; or ſhall be aiding and aſſiſting therein; and ſhall be convicted thereof at the aſſizes: he ſhall be tranſported for ſeven years, or ſuffer ſuch other leſſer puniſhment by whipping, fine, or impriſonment, as the court ſhall award. Provided, that conies may be taken, in the day time, on the ſea or river banks in the county of Lincoln, ſo far as the tide ſhall extend, or within one furlong of the ſaid banks; and the perſon taking them ſhall not be obliged to make ſatisfaction for damage, unleſs the ſame ſhall exceed the ſum of 1 s. 5 *G.* 3. *c.* 14. *ſ.* 6, 7, 8, 9.

Felony without benefit of clergy.

6. By the Black Act abovementioned, If any perſon, being armed and diſguiſed, ſhall appear in any warren or place where conies are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for ſuch offence, or procure any perſon to join him therein; he ſhall be guilty of felony without benefit of clergy.

7. No

7. No perſon ſhall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully uſed for the breeding or keeping of conies (except the owner or poſſeſſor of the ground, or perſons employed by them); on pain that the offender, on conviction in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs, ſhall give to the party injured ſuch damages and in ſuch time as ſhall be appointed by the juſtice, and over and above pay down preſently to the overſeers for the uſe of the poor ſuch ſum not exceeding 10s, as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction for ſuch time as he ſhall think fit, not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 5. Killing in the night, in the borders of warrens.

The ſtatute ſaith, *upon the borders of warrens*; but if they are out of the warren, no perſon hath any property in them, and a man may juſtify killing them if they eat up his corn; but no action lies againſt the owner of the warren. 5 *Co.* 104. *Read.* Game.

So a perſon that hath a right of common may kill them, when they are out of the warren and deſtroy the common; but he cannot have an action on the caſe againſt the lord, for that would be to create a multiplicity of actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

For a man cannot have an action for another man's conies breaking into his ground, becauſe they are no longer the other's than while they are in the warren or place where he hath a right to keep them; ſo that no violation hereby ariſes to the property of one man by the beaſts of another; but the conies, being in their natural liberty, may be lawfully killed by the owner of the ſoil. 2 *Bac. Abr.* 614.

But if the lord hath a right to put conies upon the common, and by an exceſs in the number ſurcharges the common, and by the number of burrows made by the conies prevents the commoner's cattle from depaſturing the common; an action in ſuch caſe is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nuſance. As in the caſe of *Cooper* v. *Marſhal*, *E.* 30 *G.* 2. By lord *Mansfield* Ch. J. The queſtion in this caſe is not, whether the act of the lord be or be not hurtful, or how far it may be ſo: but the queſtion turns upon the remedy, whether it is abatable, whether the commoner can do himſelf juſtice. It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abatable.

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The lord, by his grant of common, gives every thing incident to the enjoyment of it, as ingreſs, egreſs, and the like: and thereby authorizes the commoner to remove every obſtruction to his cattle's grazing the graſs which grows upon ſuch a ſpot of ground: becauſe every ſuch obſtruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoner's cattle out, is inconſiſtent with a grant which gives them a right to come in. But the lord ſtill remains owner of the ſoil; and is not debarred from exerciſing any act of ownerſhip. The commoner has no right to meddle with the ſoil. In the preſent caſe, the lord has done nothing contrary to the grant. He hath not obſtructed the commoner from entring and putting in his cattle. The lord has a right to put conies upon the common. The conies themſelves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord ſurcharges, the commoner is injured in his right of common, it is true: But what is the commoner's remedy? Not, to abate; not, to be his own judge, in a complicated queſtion, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right ſo far, but no farther. Yet the commoner cannot deſtroy or drive off the conies; nor, conſequently can he deſtroy the burrows, which is in effect deſtroying the conies.———By Mr. Juſtice *Deniſon*: Upon the record of this caſe, it muſt be taken, that the plaintiff was owner of the ſoil, and had a free warren; and that there is not ſufficient common left, by the increaſe of the conies, for the uſe of the commoner. The queſtion then is, whether the commoner ſhall be intruſted to deſtroy the eſtate of the lord, in order to preſerve his own right of common. This would be to conſtitute himſelf judge in his own cauſe: No, let him take his proper remedy. A coney-burrow is not of its own nature a nuſance: On the contrary, it is eſſential to a free warren. Therefore the nuſance depends upon the number of them: And you can, at the utmoſt, only abate ſo much of the thing as is a nuſance. You cannot deſtroy the whole (which is the right here claimed); but only ſo much of the thing as makes it a nuſance.———By Mr. Juſtice *Foſter*: This juſtification is clearly bad. It is founded on a claim of right which cannot be maintained. It is admitted, that a commoner cannot in this caſe deſtroy the conies. Conſequently, he cannot deſtroy the burrows; for the effect is, deſtroying the conies. If the lord has exceeded the bounds of his right, the law is to determine

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the quantum of ſuch exceſs; and to the law the commoner muſt reſort for his remedy, if he is aggrieved. *Burrow. Mansfield.* 252.

8. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares or other like engines, for taking of conies, and ſhall be thereof in like manner convicted, he ſhall give to the party grieved ſuch damages, and in ſuch time as the juſtice ſhall appoint, and pay down preſently to the overſeer for the uſe of the poor ſuch ſum not exceeding 10s, as the juſtice ſhall appoint; which, if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 6. Setting ſnares.

9. If any perſon not having lands or hereditaments of 40l a year, or not worth in goods 200l, ſhall uſe any gun or bow to kill coneys, or ſhall keep any ferrets or coney dogs (except he have grounds incloſed for keeping of conies, the increaſing of which ſhall amount to 40s a year to be let, and except warreners in their warrens); in ſuch caſe, any perſon having 100l a year may ſeize the ſame to his own uſe. 3 *J.* *c.* 13. *ſ.* 5. Keeping engines.

VI. Laws concerning the winged game in particular.

I. Of hawks and hawking.
II. Of ſwans.
III. Of partridges and pheaſants.
IV. Of pigeons.
V. Of wild ducks, wild geeſe, and other waterfowl.
VI. Of heath fowl, grouſe, and buſtards.
VII. Of herons.
VIII. Of other fowl.

I. Of hawks and hawking.

1. No man ſhall bear any hawk of the breed of *England*, called a nyeſſe, goſhawk, taſſel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over ſea, he ſhall bring a certificate thereof from the officer of the port; on the like pain of forfeiting the ſame to the king. And the perſon that bringeth any ſuch hawk to the king, ſhall have a reaſonable reward of the king, or elſe the hawk for his labour. 11 *H.* 7. *c.* 17. What hawks a man ſhall bear.

2. Every

Perſon finding a hawk.

2. Every perſon who findeth a faulcon, tercelet, laner or laneret, or other hawk that is loſt, ſhall preſently bring the ſame to the ſheriff; and the ſheriff ſhall make proclamation in all the good towns in the county, that he hath ſuch an hawk in his cuſtody; and if he is challenged in four months, the owner ſhall have him again, paying the coſts: if he is not challenged in four months, the ſheriff ſhall have him, making gree to him that took him, if he be a ſimple man; but if he be a gentleman, and of eſtate to have the hawk, then the ſheriff ſhall redeliver to him the hawk, taking of him reaſonable coſts for the time that he had him in his cuſtody. 34 *Ed.* 3. *c.* 22.

Stealing a hawk.

3. And if any man ſteal any hawk, and the ſame carry away, not doing the ordinance aforeſaid; it ſhall be done of him as of a thief, that ſtealeth a horſe or other thing. 37 *Ed.* 3. *c.* 19. That is, he ſhall be guilty of felony, but ſhall have his clergy. 3 *Inſt.* 98.

Taking hawks or eggs out of the woods.

4. If any perſon ſhall take away any hawks or their eggs, by any means unlawfully, out of the woods or ground of any perſon; and be thereof convicted at the aſſizes or ſeſſions, on indictment, bill, or information, at the ſuit of the king or of the party; he ſhall be impriſoned three months, and ſhall pay treble damages; and after the three months expired, ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El.* *c.* 21. *ſ.* 3.

But by a more ancient ſtatute, no man ſhall take any ayre, faulcon, goſhawk, taſſel, laner, or laneret, in their warren, wood, or other place; nor purpoſely drive them out of their coverts accuſtomed to breed in, to cauſe them to go to other coverts to breed; nor ſlay them for any hurt done by them: on pain of 10 l, half to him that will ſue before the juſtices of the peace, and half to the king. 11 *H.* 7. *c.* 17.

And no manner of perſon, of what condition or degree he be, ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any faulcon, goſhawk, or laner, out of the neſt; on pain (being convicted thereof before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. *id.*

Hawking in corn.

5. If any manner of perſon ſhall hawk in another man's corn after it is eared, and before it is ſhocked; and be convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40 s, to the owner: And if not paid in ten days, he ſhall be impriſoned for a month. 23 *El.* *c.* 10.

II. Of

II. Of ſwans.

1. No perſon (other than the king's ſon) unleſs he have lands of freehold to the value of five marks a year, ſhall have any mark or game of ſwans; on pain of forfeiting the ſwans, half to the king, and half to any perſon (ſo qualified) who ſhall ſeize the ſame. 22 *Ed.* 4. *c.* 6. Qualification to keep ſwans.

2. It is felony to take any ſwans that be lawfully marked, tho' they be at large. *Dalt. c.* 156. Stealing ſwans marked.

3. And as to ſwans unmarked; if they be domeſtical or tame, that is, kept in a moat, or in a pond near to a dwelling houſe, to ſteal ſuch is alſo felony. *Dalt. c.* 156. Swans unmarked.

So it ſeemeth of ſwans unmarked, ſo long as they keep within a man's manor, or within his private rivers; or if they happen to eſcape from thence, and be purſued and taken, and brought in again. *id.*

But if ſwans that are unmarked ſhall be abroad, and ſhall attain to their natural liberty, then the property of them is loſt; and ſo long, felony cannot be committed by taking them. *id.*

And yet ſuch unmarked and wild ſwans the king's officers may ſeize (being abroad) for the king's uſe, by his prerogative. Alſo, the king may grant them, and by conſequence another may preſcribe to have them, within a certain precinct or place. *id.*

4. Every perſon who ſhall take the eggs of any ſwans out of the neſt, or willingly ſpoil them in the neſt; and ſhall be convicted thereof before two juſtices, by confeſſion, or oath of two witneſſes; ſhall be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor, 20s for every egg; or after one month of his commitment, become bound by recognizance with two ſureties in 20l apiece, before two juſtices, never to offend again in like manner; which recognizance ſhall be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2. Swans eggs.

But by a more ancient ſtatute, no perſon ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any ſwan; on pain (on conviction before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the ſwans. 11 *H.* 7. *c.* 17.

III. Of partridges and pheaſants.

Partridges and pheaſants are birds of warren, and the law ſeems peculiarly to protect them; as appears by what follows:

Taking them in another man's ground.

1. By the 11 *H.* 7. *c.* 17. It is enacted, that no perſon of what condition he be, ſhall take or cauſe to be taken, any pheaſants or partridges by nets, ſnares, or other engines, out of his own warren, upon the freehold of any other perſon, without the ſpecial licence of the owner or poſſeſſioner of the ſame; on pain of 10 l, half to him that ſhall ſue, and half to the owner or poſſeſſioner of the ground where they ſhall be taken.

Taking them with dogs, nets, or engines; or their eggs.

2. Every perſon who ſhall ſhoot at, kill, or deſtroy any pheaſant or partridge, with any gun or bow; or ſhall take, kill, or deſtroy them with ſetting dogs or nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; or ſhall take their eggs out of the neſt, or ſpoil them in the neſt; ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to goal three months, unleſs he pay upon conviction to the churchwardens for the uſe of the poor, 20 s for every pheaſant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two ſureties, before two juſtices, in 20 l each, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2.

And by the 7 *J.* *c.* 11. Every perſon who ſhall take, kill, or deſtroy, any pheaſant or partridge, with ſetting dogs and nets, or otherwiſe with any manner of nets, ſnares, or engines, ſhall, on conviction before two juſtices, by confeſſion, or oath of one witneſs, be committed to gaol for three months, unleſs he forthwith pay to the churchwardens or overſeers 20 s for every pheaſant or partridge; and further to become bound by recognizance of 20 l before one juſtice, that he ſhall not thereafter kill or deſtroy any pheaſant or partridge. The recognizance to be filed at the next ſeſſions.

Selling or buying.

3. Every perſon who ſhall ſell, or buy to ſell again, any partridge or pheaſant (except they be reared and brought up in houſes, or brought from beyond ſea); ſhall on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every partridge 10 s, and for every pheaſant 20 s, half to him that will ſue, and half to the poor. 1 *J.* *c.* 27. *ſ.* 4.

Taking in the night, or on a Sunday or Chriſtmaſs day.

4. By the 23 *El.* *c.* 10. If any perſon, of what eſtate, degree, or condition ſoever, ſhall take, kill or deſtroy any pheaſants or partridges in the night time; and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit for every pheaſant 20 s, and for every partridge 10 s, half to him that ſhall ſue, and half to the lord of the manor, unleſs ſuch lord ſhall licence or procure the ſaid taking or killing, in which caſe the ſaid half ſhall go to the poor,

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to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he ſhall be impriſoned for one month: And moreover, beſides ſuch forfeiture and impriſonment, he ſhall give bond to ſome juſtice of the peace, with good ſureties, not to offend again in like manner for the ſpace of two years.

By the 9 *An.* *c.* 25. If any perſon whatſoever ſhall take or kill any pheaſant or partridge in the night time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5 l, half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months.

And by the 13 *G.* 3. *c.* 80. If any perſon ſhall knowingly and wilfully kill, take, or deſtroy, or uſe any gun, dog, ſnare, net, or other engine, with intent to kill, take, or deſtroy any pheaſant or partridge in the night, that is, between the hours of 7 at night and 6 in the morning from the 12th day of October to the 12th day of February, and between the hours of 9 at night and 4 in the morning from the 12th day of February to the 12th day of October; or, in the day time, on a Sunday or Chriſtmaſs day: he ſhall forfeit for the firſt offence not exceeding 20 l, nor leſs than 10 l; for the ſecond offence, not exceeding 30 l, nor leſs than 20 l; for the third and every other ſubſequent offence 50 l. To be levied and recovered as the like penalties for killing any hare in the night, or on a Sunday or Chriſtmaſs day, as is above ſet forth.

5. Every perſon whatſoever, who ſhall hawk at, deſtroy, or kill, any pheaſant or partridge, with any kind of hawk, or dog, by colour of hawking, between the firſt of *July*, and the laſt of *Auguſt*, ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, in ſix months after the offence, be committed to gaol for one month, unleſs he pay upon conviction to the churchwardens or overſeers for the uſe of the poor, 40 s for every ſuch hawking at any pheaſant or partridge, and 20 s for every ſuch pheaſant or partridge which he, his hawk, or dog, ſhall take or kill. 7 *J.* *c.* 11. *ſ.* 2.

At what time hawking at them ſhall be prohibited.

6. Finally, by the 2 *G.* 3. *c.* 19. No perſon ſhall, upon any pretence whatſoever, take, kill, carry, ſell, buy, or have in his poſſeſſion or uſe, any partridge between Feb. 12, and Sep. 1; or any pheaſant between Feb. 1, and Oct. 1, yearly; on pain of forfeiting, on conviction by one witneſs, in any of the courts of record at *Weſtminſter*, 5 l for every ſuch fowl, with full coſts. But this not to extend to any pheaſant taken in the ſeaſon allowed by this act, and kept in any mew or breeding place.

Within what times taking them in any kind ſhall be prohibited.

IV. Of pigeons.

Who may erect a dove coat.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Dove-coat not a nuſance.

2. And it hath been adjudged, that erecting of a dove-houſe is not a common nuſance, nor preſentable in the leet. *Cro. Jac.* 490, 1.

Killing with dogs, nets, or engines.

3. By the 1 *J. c.* 27. *ſ.* 2. Every perſon who ſhall ſhoot at, kill, or deſtroy any houſe-dove or pigeon with any gun or bow; or ſhall take, kill, or deſtroy the ſame with ſetting dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; ſhall, on conviction before two juſtices where the offence ſhall be committed or the offender apprehended, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor of the pariſh where the offence was committed or the offender apprehended reſpectively, 20s for every pigeon, or after one month after his commitment, become bound by recognizance with two ſureties, before two juſtices, in 20l apiece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions.

And by the 2 *G.* 3. *c.* 29. If any perſon ſhall ſhoot at with an intent to kill or by any means kill or take, with a wilful intent to deſtroy any houſe-dove or pigeon, and ſhall be thereof convicted, by confeſſion or oath of one witneſs, before one juſtice where the offence was committed or the party apprehended, he ſhall forfeit 20s to the proſecutor; and if not forthwith paid, ſuch juſtice may commit him to the gaol or houſe of correction, not exceeding 3 calendar months nor leſs than one, unleſs the forfeiture ſhall be ſooner paid. But this not to extend to the owners of dove-coats, with regard to their own pigeons. And perſons convicted on this act, ſhall not be convicted on any former act: and proſecutions on this act ſhall be commenced and carried on with effect within two months after the offence committed: and perſons impriſoned for default of payment of the penalty, ſhall not be liable afterwards to pay ſuch penalty.

Pigeons treſpaſſing.

4. But if the pigeons come upon my land, and I kill them; the owner hath no remedy againſt me; tho' I may be liable to the ſtatutes which make it penal to deſtroy them. *Cro. Ja.* 492.

5. Doves

5. Doves in a dove-houſe, young and old, ſhall go to the heir, and not to the executor. 1 *Inſt.* 8. Pigeons to go to the heir.

V. Of Wild ducks, wild geeſe, and other water fowl.

1. Every perſon who ſhall ſhoot at, kill, or deſtroy with any gun or bow, any mallard, duck, teal, or widgeon; and the ſame be proved by confeſſion, or oath of two witneſſes, before two juſtices;—ſhall be committed to gaol for three months, unleſs he pay to the church-wardens for the uſe of the poor, 20 s for each fowl, or after one month after commitment become bound by recognizance with two ſureties, before two juſtices, in 20 l each, not to offend again in like manner: Which recognizance ſhall be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2. Shooting water fowl.

2. No perſon, between the laſt day of *May*, and the laſt day of *Auguſt* yearly, ſhall take, or cauſe to be taken, any wild ducks, mallards, widgeons, teals, or wild geeſe, with nets or other engines; on pain of a year's impriſonment, and to forfeit for every fowl ſo taken 4 d, half to the king, and half to him that will ſue by action of debt: Alſo the juſtices of the peace may enquire of, hear and determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11. Not to be taken in the moulting-ſeaſon.

Nevertheleſs, any gentleman, or any other that may diſpend 40 s a year of freehold, may hunt and take ſuch wild fowl with their ſpaniels only, without uſing a net or other engine except the long bow. *id.*

But by a ſubſequent ſtatute, if any perſon whatſoever (between *June* 1. and *Oct.* 1. yearly, 10 *G.* 2. *c.* 32.) ſhall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of reſort for wild fowl in the moulting ſeaſon; and ſhall be convicted thereof before one juſtice by the oath of one witneſs; he ſhall for every ſuch fowl forfeit 5 s, half to the informer, and half to the poor, by diſtreſs, rendring the overplus above the penalty and charges of diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not exceeding one month, nor leſs than 14 days, to be whipt and kept to hard labour. And the nets to be ſeized and deſtroyed in the preſence of the juſtice. 9 *An.* *c.* 25. *ſ.* 4.

3. No perſon from *March* 31, to *June* 30, yearly, ſhall take or deſtroy the eggs of any mallard, teal, or other water fowl; on pain of a year's impriſonment, and of forfeiting for every egg one penny, half to the king, and half to him that will ſue by action of debt; or, the juſ- Deſtroying their eggs.

tices of the peace may determine the ſame as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.

VI. Of heath fowl, grouſe, and buſtards.

Shooting.

1. Every perſon who ſhall ſhoot at, kill, or deſtroy, with any gun or bow, any grouſe, heath-cock, or moor game; ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs upon conviction he pay to the churchwardens for the uſe of the poor, 20 s, for each fowl, or, after one month after his commitment, become bound by recognizance with two ſureties in 20 l each, before two juſtices, not to offend again in like manner: the recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2.

Within what times only to be killed.

2. No perſon ſhall, upon any pretence whatſoever, wilfully take, kill, deſtroy, carry, ſell, buy, or have in his poſſeſſion or uſe, any heath fowl commonly called *Black game*, between Dec. 10, and Aug. 20; nor any grouſe commonly called *Red game*, between Dec. 10, and Aug. 12; nor any *buſtard*, between Mar. 1, and Sep. 1, in any year: on pain of forfeiting for the firſt offence any ſum not exceeding 20 l, nor leſs than 10 l; and for the ſecond and every ſubſequent offence, not exceeding 30 l, nor leſs than 20 l; half to the informer, and half to the poor. 13 *G.* 3. *c.* 55. *ſ.* 1, 2, 4.

To be recovered in any of his majeſty's courts of record at Weſtminſter, on proſecution within 6 Kalendar months after the offence committed.—Or the ſame may be recovered before one juſtice, information on oath being made before him within three Kalendar months after the offence committed; which ſaid juſtice may convict the offender by confeſſion or oath of one witneſs: and on neglect or refuſal to pay, ſhall levy the ſame by diſtreſs, together with all coſts and charges attending the ſame. And ſuch juſtice may order the offender to be detained in ſafe cuſtody, until return may conveniently be had to the warrant of diſtreſs, unleſs the ſaid offender ſhall give ſecurity, by recognizance or otherwiſe, to the ſatisfaction of ſuch juſtice, for his appearance before him on the day appointed for the return of the warrant of diſtreſs, ſuch day not exceeding 5 days from the time of taking ſuch ſecurity. And if no ſufficient diſtreſs can be had, ſuch juſtice ſhall commit the offender to the common gaol or houſe of correction, there to be kept to hard labour for any time not exceeding 6 nor leſs than 3 Kalen-

Kalendar months, unleſs the forfeiture, and all coſts and charges attending the proſecution be ſooner paid. *ſ.* 3, 4, 9.

And the conviction ſhall be drawn up in this or the like form: *Be it remembred, that on the —— day of —— in the year of our Lord ——* A. B. *having appeared before me —— one of his majeſty's juſtices of the peace for the county of —— and due proof having been made upon oath by one or more credible witneſs or witneſſes, or by confeſſion of the party* (as the caſe may be) *is convicted of* (ſpecifying the offence, with the time and place where the ſame was committed, and alſo ſpecifying, if known, that it is the firſt, ſecond, or any ſubſequent offence againſt this act, as the caſe ſhall be). *Given under my hand and ſeal the day and year aforeſaid.* Which conviction the juſtice ſhall cauſe to be written on parchment, and returned to the next ſeſſions, there to be filed and kept amongſt the records. And the clerk of the peace ſhall grant copies thereof, on payment of 1 s for each copy. *ſ.* 6, 7.

And if any perſon ſhall think himſelf aggrieved, he may appeal to any general quarter ſeſſions to be holden within 4 Kalendar months after the cauſe of complaint ſhall ariſe, giving 14 days notice in writing to the juſtice and to every other perſon againſt whom complaint ſhall be made; and in 4 days after ſuch notice, entring into recognizance before a juſtice with one ſufficient ſurety, conditioned to try the appeal at, and abide the order of, and pay ſuch coſts as ſhall be awarded by the juſtices at ſuch ſeſſions. And the juſtice, having received notice of appeal, ſhall return all proceedings had before him, touching the matter of the ſaid appeal, to the juſtices at ſuch ſeſſions. And the ſaid juſtices, upon proof of the notice given, and of the entring into ſuch recognizance, ſhall determine the appeal in a ſummary way, and award coſts to either party. And none of the proceedings ſhall be quaſhed for want of form, nor removed by certiorari or other proceſs into any of the courts at Weſtminſter. *ſ.* 10.

Killing in the night, or on a Sunday or Chriſtmaſs day.

3. By the 9 *An. c.* 25. If any perſon whatſoever ſhall take or kill any moor, heath-game, or grouſe, in the night time; he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit 5 l, half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months.

And by the 13 *G.* 3. *c.* 80. If any perſon ſhall knowingly and wilfully kill, take, or deſtroy, or uſe any gun,

dog, ſnare, net, or other engine, with intent to kill, take, or deſtroy, any moor game or heath game, in the night, *viz.* between the hours of 7 at night and 6 in the morning from the 12th day of October to the 12th day of February, and between the hours of 9 at night and 4 in the morning from the 12th day of February to the 12th day of October; or, in the day time, on a Sunday or Chriſtmaſs day: he ſhall forfeit for the firſt offence not exceeding 20 l nor leſs than 10 l, for the ſecond offence not exceeding 30 l nor leſs than 20 l, for the third and every other ſubſequent offence 50 l. To be levied and recovered as the like penalties for killing any hare in the night, or on a Sunday or Chriſtmaſs day, as is above ſet forth.

Burning ling.

4. For the better preſerving the red and black game of grouſe commonly called heath-cocks, or heath-polts, no perſon whatſoever on any mountains, hills, heaths, moors, foreſts, chaſes, or other waſtes, ſhall preſume to burn between *Feb.* 2, and *June* 24, any grig, ling, heath, furze, goſs, or fern; on pain of being committed to the houſe of correction, for any time not exceeding one month, nor leſs than ten days, there to be whipt and kept to hard labour. 4 & 5 *W. c.* 23. *ſ.* 11.

As here is no method of conviction directed for this offence, the juſtices of the peace ſeem to have no cognizance thereof; but the trial and conviction muſt be at the aſſizes, or in the courts at *Weſtminſter*.

In the 5 *An. c.* 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* foreſt, and other places in *Nottinghamſhire*, which not being of general concern are here omitted.

VII. Of herons.

Shooting herons.

1. Every perſon who ſhall ſhoot at, kill or deſtroy, any heron, with gun or bow, ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to goal for three months, unleſs on conviction he pay to the churchwardens for the uſe of the poor, 20 s for each heron, or after one month from his commitment, become bound by recognizance with two ſureties in 20 l each, before two juſtices, not to offend again in like manner: The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

None ſhall take but by hawking.

2. No perſon, without his own ground, ſhall ſlea, take, or cauſe to be taken, by mean of craft or engine, any herons,

herons, unleſs it be with hawking, or with long bows; on pain of 6s 8d, to him who ſhall ſue by action of debt: or the ſeſſions may call before them perſons ſuſpected, and examine them; and if found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of the forfeiture for their labour. 19 *H.* 7. *c.* 11.

Young herons.

3. And no perſon, without his own ground, ſhall take any young herons out of the neſt; on pain of 10s in like manner, for every young heron. 19 *H.* 7. *c.* 11.

Eggs.

4. And if any perſon from *March* 31, to *June* 30, ſhall take or deſtroy the eggs of any heron; he ſhall be impriſoned for a year, and forfeit for every egg 8d, half to the king, and half to him that will ſue by action of debt, or before the juſtices of the peace. 25 *H.* 8. *c.* 11.

VIII. Of other fowl.

In general; No manner of perſon, from the laſt day of *March* to the laſt day of *June* yearly, ſhall by day or night, take, or deſtroy any eggs of any kind of wild fowl, from or in any neſt or place, where they ſhall chance to be laid by any kind of the ſame wild fowl; on pain of impriſonment for a year, and to forfeit for every egg of a buſtard 20d, of a bittour or ſhovelard 8d, and of other wild fowl (except crows, ravens, boſcards, and other fowl not uſed to be eaten) 1d; half to the king, and half to him that will ſue by action of debt: Alſo the juſtices of the peace may determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.*

VII. Laws

* With regard to fowl not uſed to be eaten, together with certain other noxious animals, there were proviſions made by an ancient ſtatute, viz. 8 *El.* *c.* 15. intitled, *An Act for the preſervation of graine*, which it were to be wiſhed might be revived, with a proper conſideration of the difference of the value of money betwixt that time and the preſent; by which it was required, that the churchwardens ſhould levy by an aſſeſſment, and pay, for the heads of every three old crowes, choughes, or rookes, 1d; of ſixe young crowes, choughes, or rookes, 1d; and for every ſixe egges of any of them, 1d; for every twelve ſtares heads, 1d; for every heade of merten hawks, fureſckytte, moldkytte, buſarde, ſchagge, carmeraunt, or ryngtayle, 2d; and for two egges of them 1d; for every iron or oſpray's heade, 4d; for the heade of every wood wall, pye, jay, raven, kyte,

VII. Laws for preſerving the game of fiſh in particular.

There are ſome acts relating to this ſubject, of which, being of leſs general concern, it is thought ſufficient to inſert only the titles; *viz.*

(1) An act for the preſervation of fiſhing in the river of *Severn*. 30 *C.* 2. *c.* 9.

(2) An act for the increaſe and better preſervation of ſalmon and other fiſh, in the rivers within the counties of *Southampton* and *Wilts*. 4 *An. c.* 21. In which ſome alterations are made by the 1 *G. ſt.* 2. *c.* 18.

(3) An act for the better preſervation and improvement of the fiſhery within the river of *Thames*, and for regulating and governing the company of fiſhermen of the ſaid river. 9 *An. c.* 26.

(4) An act for the more effectual preſervation and improvement of the ſpawn and fry of fiſh in the river of *Thames*, and waters of *Medway*; and for the better regulating the fiſhery thereof. 30 *G.* 2. *c.* 21.

(5) An act for the better preſervation of fiſh, and regulating the fiſheries, in the rivers *Severn* and *Verniew*. 18 *G.* 3. *c.* 33.

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kyte, or king's fiſher, 1d; bulfynce, or other bird that devoureth the blowth of fruit, 1d; for the heade of every foxe or gray, 12d; and for the heade of every fytchewe, polcate, weſel, ſtote, fayre, bade, or wylde cat, 1d; for the heade of every otter or hedgehogge, 2d; for the heads of three rattes or twelve miſe, 1d; for the heade of every want or moldwarp, 1 halfpenny.

And by another ancient ſtatute 24 *H.* 8. *c.* 10. Every townſhip was required to keep a crow net, to deſtroy crows, rooks, and choughs.

There is ſome ſhadow of theſe regulations ſtill remaining in ſome pariſhes, where they give a reward for deſtroying ſeveral of the aboveſaid noxious fowl and vermin. Theſe ſtatutes were ſuffered to expire, probably becauſe in a ſhort time there would be no need of their continuance; but it might be convenient nevertheleſs, to revive the like proviſions from time to time; and, amongſt the reſt of the ravenous tribe, to ſet a price now at length upon the head of that diſtinguiſhed fowl, for the ſake of which moſt of the ancient laws concerning the winged game were enacted, and which it was felony to deſtroy. But now the current hath received a contrary direction; and the hawk himſelf deſtroys more game, than gunpowder and hailſhot which have uſurped his empire.

What

What follows ſeems beſt reducible under theſe heads:

I. The penalty of fiſhing in ponds and other private fiſheries.
II. Rules about the ſize, and preſerving the breed of fiſh.
III. Rules concerning fiſhing in or near the ſea.
IV. Importing fiſh.

I. The penalty of fiſhing in ponds and other private fiſheries.

Who may erect a fiſh pond.

1. Any man may erect a fiſh pond without licence; becauſe it is a matter of profit, and for the increaſe of victuals. 2 *Inſt.* 199.

Three years impriſonment and fine.

2. If any treſpaſſers in ponds be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs; and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof) and then ſhall find good ſurety that after they ſhall not commit the like treſpaſs: And if they have not whereof to make fine, after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit. 3 *Ed.* 1. *c.* 20.

Note; Thoſe are treſpaſſers in ponds, who endeavour to take fiſh therein. 2 *Inſt.* 200.

Three months impriſonment and treble damages.

3. If any perſon ſhall unlawfully break, cut, or deſtroy any head or dam of a fiſh pond, or ſhall wrongfully fiſh therein, with intent to take or kill fiſh; he ſhall on conviction at the ſuit of the king, or of the party, at the aſſizes or ſeſſions, be impriſoned three months, and pay treble damages; and after the three months expired ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El. c.* 21. *ſ.* 2, 6.

Treble damages and 10 s to the poor.

4. Whereas divers idle, diſorderly, and mean perſons, betake themſelves to the ſtealing, taking, and killing of fiſh, out of ponds, pools, motes, ſtews, and other ſeveral waters and rivers, to the great damage of the owners thereof; it is enacted, that if any perſon ſhall uſe any net, angle, hair, nooſe, troll, or ſpear; or ſhall lay any wears, pots, fiſh hooks, or other engines; or ſhall take any fiſh by any means or device whatſoever, or be aiding

thereunto, in any river, ſtew, pond, mote, or other water, *without the conſent of the lord or owner of the water*; and be thereof convicted by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; every ſuch offender in ſtealing, taking or killing fiſh, ſhall for every ſuch offence give to the party injured ſuch recompence and in ſuch time as the juſtice ſhall appoint, not exceeding treble damages; and moreover ſhall pay down to the overſeers for the uſe of the poor, ſuch ſum, not exceeding 10 s, as the juſtice ſhall think meet: In default of payment, to be levied by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not exceeding one month, unleſs he enter into bond with one ſurety to the party injured, not exceeding 10 l, never to offend in like manner. 22 & 23 *C.* 2. *c.* 25. *ſ.* 7.

And the juſtice may take, cut, and deſtroy all ſuch angles, ſpears, hairs, nooſes, trolls, wears, pots, fiſh hooks, nets or other engines, wherewith ſuch offender ſhall be apprehended. *ſ.* 8.

Perſons aggrieved may appeal to the next ſeſſions, whoſe determination ſhall be final, if no title to any land, royalty, or fiſhery be therein concerned. *ſ.* 9.

M. 32 *G.* 2. *K.* and *Mallinſon.* A conviction for *taking and killing fiſh*, not ſetting forth (amongſt other particulars) that the defendant had not the licence or *conſent of the owner*, was adjudged to be bad. For, by the court; The offence provided againſt by the act is *ſtealing* fiſh, taking it without the conſent of the owner. The juriſdiction given to the juſtice is over every ſuch offender in ſtealing, taking, and killing. But the man here is not convicted of any offence; for he is not charged with ſtealing, nor even with taking and killing the fiſh of another perſon, or in another perſon's pond. It may be his own pond, and his own fiſh, for any thing that is ſtated to the contrary. And the conviction was quaſhed. *Burrow, Mansfield.* 679.

Engines to be ſeized.

5. Whereas divers idle, diſorderly, and means perſons, have and keep nets, angles, leaps, piches and other engines for the taking and killing of fiſh out of the ponds, waters, rivers, and other fiſheries, to the damage of the owners thereof, therefore no perſon hereafter ſhall have or keep any net, angle, leap, piche, or other engine for the taking of fiſh, other than the makers and ſellers thereof, and other than the owner and occupier of a river or fiſhery; and except fiſhermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fiſhery, and every other perſon

by him appointed, may ſeize, detain, and keep to his own uſe, every net, angle, leap, piche, and other engine, which he ſhall find uſed or laid, or in the poſſeſſion of any perſon fiſhing in any river or fiſhery, without the conſent of the owner or occupier thereof. And alſo any perſon, authorized by a juſtice's warrant, may in the day time ſearch the houſes, outhouſes, and other places of any perſon hereby prohibited to have or keep the ſame, who ſhall be ſuſpected to have or keep in his cuſtody or poſſeſſion any net, angle, leap, piche, or other engine aforeſaid, and ſeize and keep the ſame to his own uſe, or cut or deſtroy the ſame, as things by this act prohibited to be kept by perſons of their degree. 4 & 5 *W.* *c.* 23. *ſ.* 5, 6.

Tranſportation or pecuniary forfeiture.

6. If any perſon ſhall enter into any park or paddock fenced in, and incloſed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling houſe, in or through which park or paddock, garden, orchard, or yard, any river or ſtream of water ſhall run or be, or wherein ſhall be any river, ſtream, pond, pool, moat, ſtew, or other water, and by any ways, means, or device whatſoever, ſhall ſteal, take, kill, or deſtroy, any fiſh bred, kept, or preſerved therein, without the conſent of the owner thereof; or ſhall be aiding or aſſiſting therein; or ſhall receive or buy any ſuch fiſh, knowing the ſame to be ſo ſtolen or taken as aforeſaid; and ſhall be convicted thereof at the aſſizes, within ſix calendar months after the offence committed; he ſhall be tranſported for ſeven years. And any offender, ſurrendring himſelf to a juſtice, or being apprehended or in cuſtody for ſuch offence or on any other account, who ſhall make confeſſion thereof, and a true diſcovery on oath of his accomplice or accomplices, ſo as ſuch accomplice may be apprehended, and ſhall on trial give evidence ſo as to convict ſuch accomplice, ſhall be diſcharged of the offence ſo by him confeſſed. 5 *G.* 3. *c.* 14. *ſ.* 1, 2.

And if any perſon ſhall take, kill, or deſtroy, or attempt to take, kill, or deſtroy, any fiſh in any river or ſtream, pond, pool, or other water (not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling houſe, but in any other incloſed ground being private property); he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit 5*l*, to the owner or owners of the fiſhery of ſuch river or ſtream of water, or of ſuch pond, pool, moat, or other water: And ſuch juſtice, on complaint upon oath, may iſſue his warrant to bring the perſon com-

complained of before him; and if he ſhall be convicted before ſuch juſtice, or any other juſtice of the county or place, he ſhall immediately after conviction pay the ſaid penalty of 5 l to ſuch juſtice, for the uſe of ſuch perſon as the ſame is hereby appointed to be paid unto; and in default thereof, ſhall be committed by ſuch juſtice to the houſe of correction for any time not exceeding ſix months, unleſs the forfeiture ſhall be ſooner paid: Or ſuch owner of the fiſhery may bring an action for the penalty (within ſix calendar months after the offence) in any of the courts of record at Weſtminſter. *ſ.* 3, 4.

Provided, that nothing in this act ſhall extend to ſubject any perſons to the penalties thereof, who ſhall fiſh, take, or kill, and carry away, any fiſh in any river or ſtream of water, pond, pool, or other water, wherein ſuch perſon ſhall have a juſt right or claim to take, kill, or carry away ſuch fiſh. *ſ.* 5.

In the caſe of *K.* and *Corden*, *H.* 9 *G.* 3. The conviction was, that on ſuch a day, at ſuch a place, *Martha Buxton* of the pariſh of *Aſhborne* in the county of *Derby*, ſpinſter, cometh in her proper perſon before me *R. B.* (the juſtice) and upon her corporal oath giveth me the ſaid juſtice to underſtand and be informed, that *Uriah Corden* of *Clifton* in the pariſh of *Aſhborne* in the ſaid county gentleman, on the 18th day of June laſt paſt, in the pariſh of *Aſhborne* aforeſaid, did fiſh with a net, in a brook or ſtream called the *Schoo Brook*, in that part of the ſaid brook which runneth between the manor of *Clifton* and the manor of *Offcoat* and *Underwood* in the ſaid county; and did then and there take, kill, and deſtroy ſeveral fiſh, againſt the form of the ſtatute in ſuch caſe made and provided; he the ſaid *Uriah Corden* not having any juſt right or claim to take, kill, or carry away any ſuch fiſh; and the ſaid part of the ſaid brook or ſtream, wherein and whereupon the ſaid fiſh were ſo taken, killed and carried away, not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling houſe, but in other incloſed ground then and there being private property. And further, on the ſame day and year aforeſaid, and at the place aforeſaid, cometh one *John Chatterton* of *Aſhborne* aforeſaid gentleman, and giveth me the ſaid juſtice to underſtand, that *Richard Hayne* of *Aſhborne* aforeſaid eſquire is the true and lawful owner of the fiſhery of the aforeſaid part of the ſaid brook called *Schoo Brook*, which runneth between the manor of *Clifton* and the manor of *Uffcoat* and *Underwood* in the county aforeſaid. And thereupon the ſaid *Martha Buxton*,

Buxton, the informant aforesaid, prays that the said *Uriah Corden* may be convicted of the offence aforesaid, according to the form of the statute in such case made and provided. Whereupon, afterwards, to wit, upon the 16th day of July in the year aforesaid in the county aforesaid, he the said *Uriah Corden*, being by virtue of my warrant brought before me the justice aforesaid, at *Ashborne* aforesaid, to answer the said charge contained in the said information, and having heard the same, he the said *Uriah Corden* is asked by me the said justice, "if "he can say any thing for himself, why he should not be "convicted of the premisses above charged upon him in "form aforesaid." And because he the said *Uriah Corden* doth not nor can say any thing in his own defence touching and concerning the premisses aforesaid, but doth of his own accord freely and voluntarily acknowledge and confess all and singular the said premisses to be true, in manner and form as the same are charged upon him in the said information; and because, all and singular the premisses being heard and fully understood by me the said justice, it manifestly appears to me, that he the said *Uriah Corden* is guilty of the abovementioned offence so laid to his charge; it is therefore adjudged by me the said justice, that the said *Uriah Corden* is guilty of the aforesaid offence; and that he be, and he is hereby convicted by me the justice aforesaid of the premisses aforesaid, according to the form of the statute aforesaid; and I the justice aforesaid do award and adjudge, that for the premisses aforesaid he hath forfeited the sum of 5l of lawful money of *Great Britain*, to be paid as the statute aforesaid doth direct.—Two exceptions were taken to this conviction. First, It doth not appear that this conviction was made upon the complaint of the owner, or by authority from the owner; or even that this was a fishing without the consent of the owner. Whereas it appears clearly, upon considering the whole act of parliament, and comparing one part of it with another, that the complaint of the owner is essentially necessary to give jurisdiction to the justice. Secondly, Here is no proof upon oath, that Mr. *Hayne* was the owner, or who else was so. *John Chatterton*'s information is not upon oath: And it is confined to the time of giving it; but says nothing about who was owner at the time of the fishing. —Unto these exceptions it was answered; First, There are no expressions in the act which require the complaint to the justice to be made by the owner. The words are general. The jurisdiction is given to the justice, upon complaint

complaint made to him upon oath. Secondly, The defendant has confeſſed the whole charge: And part of it is, that Mr. *Hayne* was the owner.—The court were of opinion, that this conviction is bad. They thought that a ſtrict hand ought to be holden over theſe ſummary convictions, and it ought to appear to the court that the juſtice hath juriſdiction; which in this caſe doth not appear. Here is no complaint from the owner; nor doth it even appear to have been without his conſent. It ought, at leaſt, to appear that it was without his conſent. This is plainly implied in the act of parliament: The giving the penalty to the owner ſhews it. Here, it doth not ſufficiently appear that this was private property; or who was the owner. The witneſs who gave the juſtice to underſtand "that Mr. *Hayne* is the owner," was not upon oath; and was therefore no witneſs. The ownerſhip is not ſufficiently charged: Neither is it confeſſed. The confeſſion goes no farther than the matter charged. The words in the conviction, "not having any juſt right or "claim to take, kill, or carry away any ſuch fiſh," are the words and opinions of *Martha Buxton*; not of the juſtice who made the conviction: And they are too general. The proviſo from whence they are taken means to except ſuch perſons as have a ſpecial right to fiſh in the fiſhery of another. The offence intended in this conviction is, fiſhing in the fiſhery of Mr. *Hayne*, being private property. But all this might be done, for any thing that appears upon this conviction, with the conſent of the owner. The fact ought to appear ſo that the court may be able to judge whether the conviction be agreeable to law. If the owner had been the complainer, that would have ſhewn his diſſent: But this conviction is upon the complaint of *Martha Buxton*; and it doth not appear that the defendant hath been guilty of fiſhing in any water being private property, without conſent of the owner.—And the conviction was quaſhed. *Burr. Manſf.* 2279.

Felony, without benefit of clergy.

7. By the Black act before mentioned, if any perſon being armed and diſguiſed, ſhall unlawfully ſteal or take away any fiſh out of any river or pond; or (whether armed and diſguiſed or not) ſhall unlawfully and maliciouſly break down the head or mound of any fiſh pond, whereby the fiſh ſhall be loſt or deſtroyed, or ſhall reſcue any perſon in cuſtody for ſuch offence, or procure any other to join with him therein; he ſhall be guilty of felony without benefit of clergy.

II. Rules

II. *Rules concerning the aſſize, and preſerving the breed of fiſh.*

1. If any perſon ſhall lay or draw any net, engine, or other device, or cauſe any thing to be done in the *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Merſey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent*, or *Trent*, whereby the ſpawn or fry of ſalmon, or any kepper or ſhedder ſalmon, or any ſalmon not 18 inches from the eye to the extent of the middle of the tail, ſhall be taken and killed; or ſhall ſet any bank, dam, hedge, ſtank, or net croſs the ſame, whereby the ſalmon may be taken, or hindred from paſſing up to ſpawn; or ſhall between *July* 31, and *Nov.* 12, (except in the *Ribble*, where they may be taken between *Jan.* 1, and *Sep.* 15,) take any ſalmon of any kind in any of the ſaid rivers; or ſhall, after *Nov.* 12 yearly, fiſh there for ſalmon with any net leſs than 2½ inches in the meſh; he ſhall, on conviction, in one month, before one juſtice, on view, confeſſion, or oath of one witneſs, forfeit 5 l, and the fiſh, nets, and engines; half the ſaid ſum to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction or gaol, not more than three months, nor leſs than one, to be kept to hard labour, and ſuffer ſuch other corporal puniſhment as the juſtice ſhall think fit: The nets and engines to be cut or deſtroyed, in preſence of the juſtice: The banks, dams, hedges, and ſtanks, to be demoliſhed at the charge of the offender, to be levied in like manner. 1 *G. ſt.* 2. *c.* 18. *ſ.* 14. Salmon.

Note; It is not ſaid who ſhall have the fiſh; ſo that it ſeemeth that they are forfeited to the king.

And no ſalmon out of the ſaid rivers ſhall be ſent to *London*, under ſix pounds weight; on pain that the ſender, buyer, or ſeller, on the like conviction, ſhall forfeit 5 l, and the fiſh; half to the informer, and half to the poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. *id. ſ.* 15.

And perſons aggrieved may appeal to the next ſeſſions. *id. ſ.* 17.

2. No ſalmon ſhall be taken in the *Humber*, *Ouze*, *Trent*, *Done*, *Aire*, *Darwent*, *Wharfe*, *Nid*, *Yore*, *Swale*, *Teſe*, *Tine*, *Eden*, or any other water wherein ſalmon are taken, between *Sep.* 8, and *Nov.* 11. Nor ſhall any young ſal- Salmon ſpawn and ſmelts.

mon be taken at mill-pools (nor in other places, 13 *R.* 2. *ſt.* 1. *c.* 19.) from *Midapril* to *Midſummer*; on pain of having the nets and engines burnt for the firſt offence, for the ſecond, impriſonment for a quarter of a year; for the third, a whole year; and as the treſpaſs increaſeth, ſo ſhall the puniſhment. And overſeers ſhall be aſſigned to inquire hereof. 13 *Ed.* 1. *ſt.* 1. *c.* 47. That is, under the great ſeal, and by authority of parliament. 2 *Inſt.* 477.

And no perſon ſhall put in the waters of *Thamiſe*, *Humber*, *Ouze*, *Trent*, nor any other waters, in any time of the year, any nets called ſtalkers, nor other nets or engines whatſoever, by which the fry or breed of ſalmons, lampreys, or any other fiſh may in any wiſe be taken or deſtroyed; on the like pain. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the waters of *Lon*, *Wyre*, *Merſee*, *Rybbyl*, and all other waters in *Lancaſhire*, ſhall be put in defence as to taking of ſalmon, from *Michaelmas* to *Candlemas*, and in no other time of the year. And conſervators ſhall be appointed in like manner. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the juſtices of the peace (and the mayor of *London* on the *Thames* and *Medway*) ſhall ſurvey the offences in both the acts abovementioned; and ſhall ſurvey and ſearch all the wears in ſuch rivers, that they ſhall not be very ſtrait for the deſtruction of ſuch fry and brood, but of reaſonable wideneſs after the old aſſize uſed or accuſtomed; and they ſhall appoint under-conſervators, who ſhall be ſworn to make like ſurvey, ſearch and puniſhment. And they ſhall inquire in ſeſſions, as well by their office, as at the information of the under-conſervators, of all defaults aforeſaid, and ſhall cauſe them which ſhall be thereof indicted, to come before them; and if they be thereof convict, they ſhall have impriſonment, and make fine at the diſcretion of the juſtices: and if the ſame be at the information of an under-conſervator, he ſhall have half the fine. 17 *R.* 2. *c.* 9.

Spawn in general and fiſh under ſize and out of ſeaſon.

3. By the 1 *El.* *c.* 17. No perſon, of what eſtate, degree, and condition ſoever he be, ſhall take and kill any young brood, ſpawn, or fry of fiſh; nor ſhall take and kill any ſalmon or trouts, not being in ſeaſon, being kepper or ſhedder; nor any pike or pikerel not being in length 10 inches fiſh or more; nor any ſalmon not being in length 16 inches fiſh; nor any trout not being in length eight inches fiſh; nor any barbel not being in length 12 inches: and no perſon ſhall fiſh or take fiſh by any device, but only with net or tramel, whereof the meſh ſhall be two inches and a half broad (angling excepted, and except ſmelts, loches, minnies bulheads, gudgeons, and eels); on pain of forfeiting 20 s for every offence, and alſo the fiſh, nets, and engines.

(Note,

(Note, in ſome editions of the ſtatutes it is 20 l, in others 20 s; in the record it is not diſtinguiſhable whether it is pounds or ſhillings. The latter ſeems more adequate to the offence.)

And the conſervators of rivers may inquire hereof by a jury; and in ſuch caſe they ſhall have the fines.

The leet alſo may inquire hereof; and then the forfeiture ſhall go to the lord of the leet. And if the ſteward do not charge the jury therewith, he ſhall forfeit 40 s; half to the king, and half to him that ſhall ſue. And if the jury conceal the offence, he may impanel another jury to inquire of ſuch concealment; and if it is found, the former jury ſhall forfeit every one 20 s, to the lord of the leet.

And if the offence is not preſented in the leet within a year, then it may be heard and determined at the ſeſſions or aſſizes. (Saving the right of the conſervators.)

And by the 33 *G.* 2. *c.* 27. No perſon ſhall take, or knowingly have in his poſſeſſion either in the water or on ſhore, or ſell or expoſe to ſale, any ſpawn, fry, or brood of fiſh, or any unſizeable fiſh, or fiſh out of ſeaſon, or any ſmelt not five inches long: and any perſon may ſeize the ſame together with the baſkets and package, and charge a conſtable or other peace officer with the offender and with the goods, who ſhall carry them before a juſtice; and on conviction before ſuch juſtice, the ſame ſhall be forfeited and delivered to the proſecutor; and the offender ſhall beſides forfeit 20 s, to be levied by diſtreſs by warrant of ſuch juſtice, and diſtributed half to the proſecutor and half to the poor of the pariſh where the offence was committed (and any inhabitant of ſuch pariſh, nevertheleſs, may be a witneſs); for want of ſufficient diſtreſs, to be committed to the houſe of correction to be kept to hard labour for any time not exceeding three months, unleſs the forfeiture be ſooner paid.—— Provided, that the juſtice may mitigate the ſaid penalty, ſo as not to remit above one half. Perſons aggrieved may appeal to the next ſeſſions.—And the form of the conviction may be this:

Be it remembred, that on this ——— day of ——— in the ——— year of the reign of ——— *A. O.* is convicted before me ——— one of his majeſty's juſtices of the peace for the ——— of ——— for ——— and I do adjudge him to pay and forfeit the ſum of——. Given under my hand and ſeal the day and year aboveſaid. *ſ.* 13, 15, 16, 17, 18, 19.

Nets ſtanding day and night.

4. No perſon ſhall faſten any nets over rivers, to ſtand continually day and night; on pain of an hundred ſhillings to the king. 2 *H.* 6. *c.* 15.

III. Rules concerning fiſhing in or near the ſea.

Lobſters.

1. No perſon ſhall take, kill, or deſtroy any lobſters on the coaſt of *Scotland*, from *June* 1, to *Sep.* 1, on pain of 5 l; to be recovered by any perſon who ſhall inform and ſue for the ſame, on a ſummary complaint before two juſtices of the ſhire on the coaſt where the offence ſhall be committed. 9 *G.* 2. *c.* 33. *ſ.* 4.

Erecting a new wear.

2. Every perſon who ſhall ſet up any new wear along the ſea ſhore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek; ſhall, on conviction before one juſtice, or mayor, forfeit for every offence 10 l, half to the king, and half to him that ſhall ſue; to be levied by the conſtables or churchwardens by diſtreſs. 3 *J.* *c.* 12. *ſ.* 2.

Spawn of ſea fiſh.

3. Every perſon who ſhall willingly take, deſtroy, or ſpoil any ſpawn, fry, or brood of any ſea fiſh, in any wear or other engine or device whatſoever; ſhall forfeit for every offence 10 l, in like manner. 3 *J.* *c.* 12. *ſ.* 2.

Size of nets at ſea.

4. And every perſon who ſhall fiſh in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the ſea, with any draw-net, or drag-net under three inches meſh, *viz.* 1½ inch from knot to knot (except for the taking of ſmoulds in *Norfolk* only), or with any nets with canvas, or other engine or device, whereby the ſpawn, fry, or brood of ſea fiſh may be deſtroyed; ſhall in like manner forfeit ſuch net, and alſo 10 s, for every offence, half to the poor, and half to him that ſhall ſue. 3 *J.* *c.* 12. *ſ.* 2.

But this act ſhall not extend to any net of leſſer meſh, only for take of herrings, pilchards, ſprats, or lavidnian. *id.* *ſ.* 3.

And by a ſubſequent ſtatute, if any perſon ſhall uſe at ſea, on the *Engliſh* coaſt, any traul-net, drag-net, or ſet-net, for catching of any fiſh (except herrings, pilchards, ſprats or lavidnian) which hath the meſh leſs than 3½ inches from knot to knot; or which hath a falſe or double bottom; or ſhall put one net behind another; he ſhall, on conviction (after ſummons) before one juſtice where the offender reſides or ſhall be found, on oath of two witneſſes, in one month after the offence, forfeit the ſame, and alſo 20 l, half to the informer, and half to the poor,

poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to gaol for twelve months; and the nets to be burnt. 1 *G. ſt.* 2. *c.* 18. Perſons aggrieved may appeal to the next ſeſſions. *id.*

5. By the ſame act of 1 *G. ſt.* 2. if any perſon ſhall bring to ſhore, or expoſe to ſale any fiſh leſs than the following ſizes from the eyes to the extent of the tail, *viz.* bret or turbet 16 inches, brill or pearl 14, codlin 12, whiting 6, baſs and mullet 12, ſole 8, place or dab 8, flounder 7; he ſhall forfeit the fiſh to the poor; and alſo 20 s, half to the informer, and half to the poor; to be levied in the like manner: for default of payment, or of ſufficient diſtreſs, to be ſent to the next houſe of correction, or other common gaol of the county, to be ſeverely whipt and kept to hard labour ſix days, and not longer than 14. Perſons aggrieved may appeal to the next ſeſſions. Size of ſea fiſh.

But by the 33 *G.* 2. *c.* 27. Bret or turbot, brill or pearl, altho' under the ſaid dimenſions, may be expoſed to ſale, ſo as the ſame be not ſold by retail for above 6 d a pound. And if any greater price ſhall be demanded or taken, or ſuch fiſh ſhall not be weighed and meaſured if required; the ſame ſhall be forfeited, and the offender ſhall alſo forfeit 20 s, to be recovered, mitigated, and applied, as the penalties in the ſaid act mentioned under the laſt head, relating to the ſpawn of fiſh, and fiſh under ſize, and out of ſeaſon: and the money paid ſhall be returned to the party who paid the ſame. *ſ.* 11.

IV. Importing fiſh.

1. If any ling, herring, cod, or pilchard, ſalmon, eels, or congers, taken by foreigners, ſhall be imported or expoſed to ſale; any perſon may ſeize the ſame, half for himſelf, and half for the poor. 18 *C.* 2. *c.* 2. May be ſeized.

2. And by the 1 *G. ſt.* 2. *c.* 18. and 9 *G.* 2. *c.* 33. no fiſh taken by, or received of any foreigner, except proteſtants inhabiting in *England*, ſhall be imported (except eels, ſtock fiſh, anchovies, ſturgeon, botarge, or cavear, lobſter, and turbet); on pain of 100 l, and the maſter of the veſſel 50 l, half to the poor and half to the informer who ſhall ſue in 12 months in any of the courts at *Weſtminſter*. Penalty 100 l.

For fiſhing, ſo far as the ſalt duties are concerned therein, may be conſulted that part of the title **Exciſe**, which treateth of the duties upon ſalt.

The fiſh markets in *London* and *Weſtminſter* are regulated by the ſtatutes of 22 *G.* 2. *c.* 49. 29 *G.* 2. *c.* 39. 33 *G.* 2. *c.* 27. and 2 *G.* 3. *c.* 15. which are too large and not general enough to be here inſerted.

A. Appointment of a gamekeeper; on the 22 & 23 *C.* 2. *c.* 25. *ſ.* 2. 5 *An. c.* 14. *ſ.* 4. and 3 *G. c.* 11. *ſ.* 1.

I A. L. *eſquire, lord of the manor of* ——— *do hereby nominate, authoriſe, and appoint* A. G. *of* P. *in the county of* —— *yeoman, to be my gamekeeper of and within my ſaid manor of* ——— *in the county aforeſaid, with full power, licence, and authority to kill any hare, pheaſant, partridge, or any other game whatſoever, in and upon my ſaid manor of* —— *for my ſole uſe, and immediate benefit; and alſo to take and ſeize all ſuch guns, bows, greyhounds, ſetting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, harepipes, ſnares, or other engines for the taking and killing of conies, hares, pheaſants, partridges, or other game, as within the precincts of my ſaid manor of* ——— *ſhall be uſed by any perſon or perſons who by law are prohibited to keep or uſe the ſame. Given under my hand and ſeal, this* ——— *day of* ——— *in the* —— *year*, &c.

B. Warrant to ſearch for dogs and engines; on the 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

Weſtmorland. { To ———

WHEREAS *complaint hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *of* ——— *in the ſaid county, yeoman, that he the ſaid* A. I. *hath good ground to ſuſpect and doth ſuſpect that* A. O. *of* ——— *aforeſaid in the county aforeſaid, yeoman, being a perſon in no reſpect qualified by the laws of this realm ſo to do, hath and keepeth in his cuſtody a greyhound* [*gun, net*, &c.] *to kill and deſtroy the game: Theſe are therefore to command you in his majeſty's name to enter into, and ſearch in the day time, the houſes, outhouſes, and other places of him the ſaid* A. O. *at* —— *aforeſaid, and if you there find any greyhound*, &c. *that you ſeize and keep the ſame for the uſe of* A. L. *eſquire, lord of the manor of* ——— *in which manor the ſaid houſes, outhouſes, and*

and other places, are ſituate and do lie, or otherwiſe that you cut in pieces or deſtroy the ſame. Given under my hand and ſeal the —— day of ——— in the ——— year, &c.

C. Information againſt a perſon for keeping dogs or engines; on the 5 *Ann. c.* 14. *ſ.* 4.

Weſtmorland. THE *information and complaint of* A. I. *of —— in the county of —— yeoman, made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, the ——— day of ——— in the year ——— Who ſaith, That on the —— day of —— in the year —— at the pariſh of —— in the county aforeſaid, one* A. O. *of —— in the county aforeſaid, ſhoemaker, did keep and uſe a certain dog called a greyhound* [or as the caſe is] *to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do; whereby he the ſaid* A. O. *hath forfeited the ſum of five pounds. And thereupon he the ſaid* A. I. *prayeth the judgment of me the juſtice aforeſaid in the premiſſes, and that he may have one moiety of the ſaid forfeiture, according to the form of the ſtatute in that caſe made, and that the ſaid* A. O. *may be ſummoned to anſwer the premiſſes before me the juſtice aforeſaid.*

A. I.

Before me.
J. P.

D. Summons thereupon.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

WHEREAS *information and complaint hath been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of ——— in the county aforeſaid, ſhoemaker, on the —— day of ——— in the year ——— in the pariſh of ——— in the county aforeſaid, did keep and uſe a certain dog called a greyhound* [or as the caſe is] *to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do: Theſe are therefore to require you forthwith to ſummon the ſaid* A. O. *to appear before me at —— in the ſaid county, the —— day of —— at the hour of —— to anſwer to the ſaid information and complaint, and to be further dealt with according to law. And be you then there, to certify what you ſhall have done in the execution hereof. Herein fail you not Given under my hand and ſeal the —— day of —— in the year ——.*

E. Conviction of keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. BE *it remembred, that on the* ——— *day of* —— *in the* ——— *year of the reign of* ——— *of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* ——— *in the county aforeſaid,* A. I. *of* ——— *cometh before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes and other miſdemeanors in the ſaid county committed, and giveth me the ſaid juſtice to underſtand and be informed, that on the* ——— *day of* ——— *in the year aforeſaid, at the pariſh of* ——— *in the county aforeſaid, one* A. O. *of the pariſh aforeſaid in the county aforeſaid, ſhoemaker, not then having lands and tenements, nor any other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100 l per annum, *nor for term of life, nor any leaſe nor leaſes of* 99 *years, nor for any longer term of the clear yearly value of* 150 l, *nor then being ſon and heir apparent of an eſquire, nor of any other perſon of higher degree, nor the owner nor keeper of any foreſt, park, chaſe, or warren, nor gamekeeper to any lord or lady of a manor, did keep and uſe a certain dog, called a greyhound, to kill and deſtroy the game, againſt the form of the ſtatute in that caſe made and provided: And afterwards upon the aforeſaid day and in the year firſt abovementioned, he the ſaid* A. O. *after having been duly ſummoned in this behalf before me the juſtice aforeſaid, appeareth and is preſent, in order to make his defence againſt the ſaid charge, and having heard the ſame, he the ſaid* A. O. *is aſked by me the ſaid juſtice, if he can ſay any thing for himſelf, why he the ſaid* A. O. *ſhould not be convicted of the premiſſes above charged upon him in form aforeſaid; who pleadeth that he is not guilty of the ſaid offence: Nevertheleſs on the* —— *day of* —— *aforeſaid in the year aforeſaid, at* —— *aforeſaid, in the county aforeſaid, one credible witneſs, to wit,* A. W. *of* —— *yeoman, cometh before me the aforeſaid juſtice, and before me the ſame juſtice upon his oath on the holy goſpel to him then and there by me the aforeſaid juſtice adminiſtred, depoſeth, ſweareth, and upon his oath aforeſaid affirmeth and ſaith, that the aforeſaid* A. O. *on the* ——— *day of* ——— *aforeſaid, in the year aforeſaid at the pariſh of* —— *aforeſaid, in the county aforeſaid, not then having lands and tenements, nor any other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100 l per annum, nor

nor for term of life, nor any leaſe nor leaſes of 99 *years, nor for any longer term, of the clear yearly value of* 150 l, *nor then being ſon and heir apparent of an eſquire, nor of any other perſon of higher degree, nor the owner nor keeper of any foreſt, park, chaſe, or warren, nor gamekeeper to any lord or lady of a manor, did keep and uſe a certain dog called a greyhound, to kill and deſtroy the game: And thereupon the aforeſaid* A. O. *the —— day of —— in the year aforeſaid, at —— aforeſaid, in the county aforeſaid, before me the ſame juſtice, by the oath of one credible witneſs aforeſaid, according to the form of the ſtatute aforeſaid, is convicted: And for his offence aforeſaid hath forfeited the ſum of five pounds, to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof, I the ſaid juſtice to this preſent record of the conviction aforeſaid, have ſet my hand and ſeal at —— aforeſaid, in the county aforeſaid, the —— day of —— aforeſaid in the year aforeſaid.*

If he doth not appear upon the ſummons, the form may be varied accordingly; as is ſet forth ſpecially under the title **Conviction.**

F. Warrant to diſtrain 5 l for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To ——

WHEREAS A. O. *of —— in the ſaid county, ſhoemaker, is this day convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *being a perſon not qualified by the laws of this realm ſo to do, on the —— day of —— in the —— year of the reign of —— did keep and uſe in the pariſh of —— aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 *l, to be diſtributed as herein after is mentioned: Theſe are therefore in his ſaid majeſty's name, to command you to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [four] *days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained, and out of the money ariſing by ſuch ſale that you do pay one half of the ſaid ſum of* 5 *l to* A. I. *of —— in the ſaid county, yeoman, who informed me of the ſaid*

ſaid offence, and the other half of the ſaid ſum of 5 l to the overſeers of the poor of the pariſh of ——— aforeſaid, where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; returning the overplus on demand unto him the ſaid A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods of the ſaid* A. O. *whereon to levy the ſaid ſum of 5 l, that then you certify the ſame to me, together with the return of this precept. Given under my hand and ſeal the ——— day of ——— in the ——— year of ———*

G. Commitment for want of diſtreſs, for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of ——— in the ſaid county, ſhoemaker, was on the ——— day of ——— in the ——— year of ——— convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *not being a perſon by the laws of this realm qualified ſo to do, on the ——— day of ——— in the year aforeſaid, did keep and uſe in the pariſh of ——— aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of 5 l; and whereas on the ſaid ——— day of ——— in the year aforeſaid, I did iſſue my warrant to the conſtable of ——— to levy the ſaid ſum of 5 l, by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſtatute in that behalf made; and whereas it duly appears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be had whereon to levy the ſame: Theſe are therefore to command you the ſaid conſtable of ——— aforeſaid, to apprehend the body of the ſaid* A. O. *and him ſafely to convey to the houſe of correction at ——— in the ſaid county, and there deliver him to the ſaid keeper thereof, together with this precept. And I do hereby command you, the ſaid keeper of the ſaid houſe of correction, to receive into your cuſtody in the ſaid houſe of correction the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months: and*

and for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the —— day of —— in the —— year, &c.

II. *Certiorari* bond, on a conviction for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 2.

KNOW *all men by theſe preſents*, &c. *Whereas the above bound* A. O. *was lately convicted before* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the county of —— aforeſaid, of keeping and uſing at —— aforeſaid in the ſaid county, a greyhound to kill and deſtroy the game; and whereas the ſaid* A. O. *hath ſince his ſaid conviction ſued out his majeſty's writ of* certiorari *to remove the ſame, and the proceedings thereupon, before the king himſelf wherever he ſhall be in* England *on ——* [the day of the return of the certiorari]: *The condition of the above obligation is ſuch, that if the abovebound* A. O. *do and ſhall (according to the true intent and meaning of the ſtatute in that caſe made) well and truly pay to the ſaid* A. I. *within* 14 *days after the ſaid conviction ſhall be confirmed, or a* procedendo *granted thereupon, his full coſts and charges which he ſhall ſuſtain touching or concerning the ſaid conviction and removal thereof by the ſaid writ of* certiorari; *then the above-written obligation ſhall be void, otherwiſe of force.*

I. Warrant againſt a higler having game in his poſſeſſion; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of ——

WHEREAS A. I. *of —— hath this day made information and complaint upon oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that on the —— day of —— now laſt paſt,* A. O. *of —— in the pariſh of —— in the county aforeſaid, innkeeper, at —— aforeſaid, in the pariſh and county aforeſaid, in the houſe of him the ſaid* A. O. *then and there had in his poſſeſſion one hare* [or, *did offer to ſell one hare*, or as the caſe ſhall be] *he the ſaid* A. O. *being no ways qualified by the laws of this realm, to have the ſaid hare in his cuſtody or poſſeſſion; againſt the form of the ſtatute in that caſe made and provided: Theſe are therefore to command you, to bring the ſaid* A. O. *before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to anſwer the premiſſes, and to be further dealt withal according to law. Given under my hand and ſeal, the —— day of —— in the —— year*, &c.

K. War-

K. Warrant to levy 5 l on the goods of a higler convicted of having game in his cuſtody; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of ——

WHEREAS A. O. *of* —— *in the pariſh of* —— *in the county aforeſaid, higler, is on this preſent* —— *day of* —— *in the* —— *year of the reign of* —— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *on the* —— *day of* —— *in the* —— *year of* —— *at the pariſh of* —— —— *aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof, he the ſaid* A. O. *hath forfeited the ſum of* 5 *l. Theſe are therefore to require you to levy the ſaid ſum of* 5 *l by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum of* 5 *l, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained as aforeſaid, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of* 5 *l to* A. I. *of* —— *yeoman, who informed me of the ſaid offence, and the other half to the poor of the pariſh of* —— *aforeſaid, within which pariſh the ſaid offence was committed; returning to him the ſaid* A. O. *the overplus on demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted: And if ſufficient diſtreſs cannot be had of the goods of the ſaid* A. O. *that you certify the ſame to me together with the return of this precept. Given under my hand and ſeal the* —— *day of* —— *in the* —— *year of* ——

L. Commitment on the ſame for want of diſtreſs; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of——in the ſaid county, and to the keeper of the houſe of correction at——in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, higler, was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *of* ——— *a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *at the pariſh of* ——— *aforeſaid, in the county aforeſaid, had in his cuſtody, and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 *l. And whereas on the ſaid* ———*day of* ——*in the year aforeſaid, I did iſſue my warrant to the conſtable of* —— *to levy the ſaid ſum of* 5 *l by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſaid ſtatute: And whereas it duly appears to me, as well on the oath of the ſaid conſtable of* —— *as otherwiſe, that he the ſaid conſtable of* ——— *hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be found whereon to levy the ſame; Theſe are therefore to require you the conſtable of* —— *aforeſaid, to carry the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, and deliver him to the ſaid keeper thereof, together with this precept. And you the ſaid keeper are hereby commanded to receive into your cuſtody in the ſaid houſe of correction him the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months, without bail or mainpriſe; and for your ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal, the — day of —*

M. Mittimus for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Weſtmorland. { To the keeper of his majeſty's gaol at —— in the county of —— aforeſaid, and to his deputy or deputies there, and to every of them.

FORASMUCH *as this preſent day,* A. I. *of* —— *yeoman, and* B. I. *of* *yeoman, did arreſt and bring*

bring before me at —— in the said county, one A. O. *late of ——— in the said county, taylor, whom they had seen and found the same day (as they said) shooting in a hand gun, charged with powder and hail shot, at a coney, in a certain place in —— within the said county, called ——— contrary to the law of the realm, and thereupon prayed that justice might be done in that behalf: I* John Moore, *esquire, being the next justice of the peace in the said county to the place aforesaid, did then at ——— aforesaid, upon the said request, take the examination of the said* A. O. *and did also then and there hear the proofs of them the said* A. I. *and* B. I. *touching the said offence; And for that it did then manifestly appear unto me as well by the testimonies of them the said* A. I. *and* B. I. *as also by the plain confession of him the said* A. O. *that he the said* A. O. *had not then lands, tenements, fees, annuities or offices, to the yearly value of an hundred pounds, and that he had shot in the said hand gun in the manner and form as is aforesaid: I do send you herewithal the body of him the said* A. O. *as lawfully convicted of the said offence before me, requiring you in his majesty's name, to receive him into your said gaol, and him there safely to keep, until he shall have truly paid the pain and forfeiture of* 10 *l laid upon him for his said offence by the statute made in the three and thirtieth year of the reign of king* Henry *the eighth; that is to say, the one moiety thereof to our sovereign lord the king, and the other moiety to them the said* A. I. *and* B. I. *the first bringers of him before me. And this shall be your sufficient warrant in this behalf. Hereof fail you not, as you will answer for your contempt at your peril. Given under my hand and seal at —— aforesaid, in the county aforesaid, the ——— day of ——— in the ——— year of the reign of———*

N. Record of the conviction for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Westmorland. BE *it remembred, that on the———day of ——— in the ——— year of the reign of ——* A. I. *of ——— yeoman, and* B. I. *of —— yeoman, one* A. O. *late of ——— in the county aforesaid, taylor, found and saw, at —— in the county aforesaid, the day and year aforesaid, with a hand gun charged with gun-powder and leaden hail shot, shooting and discharging the said gun, at a certain coney then being in a certain place there, called ——— against the form of the statute in that case made and provided; and therefore the day and year aforesaid, him the said* A. O. *at——aforesaid, they did arrest, and*

at —— aforeſaid before me —— eſquire, one (and next unto the ſaid place called ——) of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſame county committed, then with them did bring, requeſting thereupon juſtice to be done; which requeſt being heard, I the ſaid J. P. *at —— aforeſaid, the day and year aforeſaid, duly thereupon have examined the aforeſaid* A. O. *at —— aforeſaid, and the proofs of the aforeſaid* A. I. *and* B. I. *in this behalf have taken: And becauſe that as well by the proofs aforeſaid, as by the confeſſion of him the ſaid* A. O. *at —— aforeſaid, then and there it hath appeared to me manifeſtly, that the aforeſaid* A. O. *at —— aforeſaid, when he had not in his own right, nor in the right of his wife, to his own uſe, nor any other to the uſe of the ſaid* A. O. *had lands, tenements, fees, annuities or offices to the yearly value of one hundred pounds, in the hand gun aforeſaid, in manner and form aforeſaid, did ſhoot, againſt the form of the ſtatute aforeſaid; I the ſaid* J. P. *the aforenamed* A. O. *at —— aforeſaid, the day and year aforeſaid, to the next gaol of our ſaid lord the king, at —— in the county aforeſaid (of the treſpaſs aforeſaid before me convicted) have committed, there to remain until the penalty and forfeiture of* 10 *l of lawful money of* Great Britain, *he ſhall truly pay or cauſe to be paid, to wit, one moiety thereof to our ſaid lord the king, and the other moiety thereof to the ſaid* A. I. *and* B. I. *the firſt bringers of the ſaid* A. O. *before me as is aforeſaid. In witneſs of all which I the aforeſaid* J. P. *to theſe preſents have put my ſeal. Given at —— aforeſaid, the day and year firſt above written.*

O. Warrant to ſearch for veniſon or engines; on the 16 *G.* 3. *c.* 30.

Weſtmorland. { To the conſtable of ——

WHEREAS A. I. *of —— in the ſaid county, yeoman, hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that there is reaſon to ſuſpect that* A. O. *of —— in the ſaid county, taylor, hath in his cuſtody or poſſeſſion, or in his dwelling houſe, outhouſe, yard, garden, or other place at —— aforeſaid, a deer which hath been unlawfully killed, or the head, ſkin, or other part thereof, as alſo divers ſlips, nooſes, toyles, ſnares, and other engines, or ſome of them, for the unlawful taking of deer: Theſe are therefore to require*

you,

you, that you do forthwith ſearch him the ſaid A. O. *and his ſaid dwelling houſe, outhouſe, garden, or place, at —— aforeſaid; and if on ſuch ſearch you ſhall find any deer ſuſpected to have been unlawfully killed, or the head, ſkin, or other part thereof, or any ſlip, nooſe, toyle, ſnare or other engine, ſuſpected to be uſed for the unlawful taking or killing of deer, that you bring the ſame and alſo him the ſaid* A. O. *before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to be examined concerning the premiſſes, and further dealt with according to law. Herein fail not. Given under my hand and ſeal the ——— day of ——— in the year ———*

P. Information againſt a deer-ſtealer; on the 16 G. 3. *c.* 20.

Weſtmorland. THE *information and complaint of* A. I. *of ——— in the county of —— gentleman, made upon oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, the ——— day of ——— in the year ——— who on his oath aforeſaid ſaith, That on the ——— day of ——— in the year ——— in a certain park of Sir* J. B. *baronet, called ——— park, in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, one* A. O. *late of ——— in the county aforeſaid, labourer, unlawfully hunted and attempted to kill one fallow deer* [or as the caſe ſhall be] *of the ſaid Sir* J. B. *without the conſent of the ſaid Sir* J. B. *and without being otherwiſe duly authorized; whereby he the ſaid* A. O. *hath forfeited the ſum of ——— And thereupon he the ſaid* A. I. *prayeth the judgment of me the juſtice aforeſaid in the premiſſes, and that he may have one moiety of the ſaid forfeiture, according to the form of the ſtatute in that caſe made; and that the ſaid* A. O. *may be brought before me the juſtice aforeſaid to anſwer the premiſſes.*

Before me A. I.
J. P.

Q. Warrant thereupon to apprehend the offender.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

WHEREAS *information and complaint upon oath hath been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that on the ——*

day of —— in the year —— in a certain park of Sir J. B. *baronet, called —— park, in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, one* A. O. *late of —— in the county aforeſaid, labourer, unlawfully hunted and attempted to kill one fallow deer of the ſaid Sir* J. B. *without the conſent of him the ſaid Sir* J. B. *and without being otherwiſe duly authorized: Theſe are therefore to require you to apprehend the ſaid* A. O. *and bring him before me the juſtice aforeſaid, at the houſe of —— in —— in the ſaid county, on —— the —— day of this preſent month of —— to anſwer the premiſſes, and to be further dealt with according to law. Herein fail you not. Given under my hand and ſeal the —— day of —— in the year of our Lord ——*

R. Warrant of diſtreſs againſt a deer ſtealer, on the 16 G. 3. c. 30.

Weſtmorland. { To the conſtable of —— in the ſaid county.

WHEREAS A. O. *of —— in the ſaid county, labourer, is this day duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *yeoman, a credible witneſs, for that he the ſaid* A. O. *on the —— day of —— in the year —— in a certain park of Sir* J. B. *baronet, called —— park, in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully hunted and attempted to kill one fallow deer of the ſaid Sir* J. B. *without the conſent of him the ſaid Sir* J. B. *and without being otherwiſe duly authorized, againſt the form of the ſtatute in that caſe made and provided; by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of —— to be diſtributed as herein after is mentioned: Theſe are therefore in his ſaid majeſty's name to command you to levy the ſaid ſum by diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of —— days next after ſuch diſtreſs by you taken, the ſaid ſum of —— together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained; and out of the money ariſing by ſuch ſale, that you do pay one moiety of the ſaid ſum of —— to* J. K. *for the uſe of his ſaid majeſty, his heirs and ſucceſſors; and the other moiety*

to the ſaid A. I. *who proſecutes for the ſame, and who informed me of the ſaid offence; returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be had or found, by and on which the ſaid ſum of* ——— *may be levied, you are hereby required to certify the ſame to me, within two days after the date of this preſent warrant. Given under my hand and ſeal, the* —— *day of* —— *in the year of our Lord* ——

S. Conſtable's return of want of diſtreſs indorſed on the warrant.

A. C. *conſtable of* ——— *within mentioned maketh oath this* ——— *day of* ——— *in the year within mentioned, that he hath made diligent ſearch for, but doth not know of, nor can find ſufficient goods and chattels of* A. O. *within mentioned, whereof to levy the withined mentioned ſum of* ——

Before me the juſtice within mentioned.
J. P.

A. C.

T. Commitment of a deer ſtealer for want of diſtreſs; on the 16 *G.* 3. *c.* 30.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the common gaol at —— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, labourer, was on the* —— *day of* —— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the year* ——— *in a certain park of Sir* J. B. *baronet, called* —— *park, in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully hunted and attempted to kill one fallow deer of the ſaid Sir* J. B. *without the conſent of him the ſaid Sir* J. B. *and without being otherwiſe duly authorized, againſt the form of the ſtatute in that caſe made and provided, by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum*

ſum of —— and whereas on the ſaid —— day of —— in the year aforeſaid, I did iſſue my warrant to the conſtable of —— in the ſaid county, to levy the ſaid ſum of —— by diſtreſs and ſale of the goods and chattels of him the ſaid A. O. *and to pay over the ſame according as is directed by the ſtatute aforeſaid: And whereas it appears to me, on the oath of the ſaid conſtable of —— that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum of —— on the goods and chattels of him the ſaid* A. O. *and that no ſufficient diſtreſs can be found whereon to levy the ſame: Therefore, in purſuance of the ſtatute aforeſaid, I do hereby command you the ſaid conſtable of —— ſafely to convey him the ſaid* A. O. *to the ſaid common gaol at —— aforeſaid, and him to deliver to the keeper thereof aforeſaid, together with this precept. And I do hereby command you the ſaid keeper of the gaol aforeſaid, to receive into your cuſtody in the ſaid gaol him the ſaid* A. O. *and him there ſafely to keep for the ſpace of one whole year, unleſs the ſaid penalty ſhall be ſooner paid. Herein fail you not reſpectively as you will anſwer the contrary at your peril. Given under my hand and ſeal, the —— day of ——in the year ——*

Gaming.

MR. *Dalton* ſays, that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in ſe*, of their own nature, but only prohibited by ſtatute. *Dalt. c.* 46.

Gaming not an offence at common law.

2. But it hath been ſaid, that all common gaming houſes are nuſances in the eye of the law, as being great temptations to idleneſs, and apt to draw together numbers of diſorderly perſons. 1 *Haw.* 198.

Gaming houſe a nuſance.

3. By the ſtatute of the 33 *H.* 8. *c.* 9. No perſon ſhall for his gain, lucre, or living, keep any common houſe, alley, or place of bowling, coyting, cloyſh, cayls, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40*s* a day. *ſ.* 11.

Gaming houſes prohibited by the 33 H. 8.

But it was reſolved upon this clauſe, in the third year of *J.* 1. that if the gueſts in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, theſe are not within the ſtatute; for although the games be uſed in an inn, tavern, or other houſe, yet if the houſe be not kept for gaming, lucre,

or gain, but they play only for recreation, and for no gain to the owner of the houſe, this is not within the ſtatute, nor is ſuch perſon that plays in ſuch houſe that is not kept for lucre or gain, within the penalty of that law. *Dalt. c.* 46.

And moreover, by the ſame ſtatute it is further enacted, that every perſon uſing and haunting any of the ſaid houſes and plays, and there playing, ſhall forfeit 6 s 8 d. 33 *H.* 8. *c.* 9. *ſ.* 12.

And all and every juſtices of the peace, mayors, ſheriffs, and other head officers, may enter all ſuch houſes and places, where ſuch games ſhall be ſuſpected to be holden; and as well the keepers of the ſame, as alſo the perſons there reſorting and playing, may take, arreſt, and impriſon, and keep in priſon, until the ſaid keepers have found ſureties to the king's uſe, to be bound by recognizance or otherwiſe, no longer to uſe, keep, or occupy any ſuch houſe, play, game, alley, or place; and alſo that the perſons there ſo found, be in like caſe bound by themſelves, or with ſureties, no more to play, haunt, or exerciſe from thenceforth, in, at, or to any of the ſaid places, or at any of the ſaid games. *id. ſ.* 14.

And the mayors, ſheriffs, bailiffs, conſtables and other head officers within every city, borough, or town, ſhall make due ſearch weekly, or at the furtheſt once a month, in all places where any ſuch houſes or places ſhall be ſuſpected to be kept; and if they ſhall not make ſuch ſearch at the fartheſt once a month, if the caſe ſo require, every ſuch perſon offending ſhall forfeit 40 s for each month. *id. ſ.* 15.

And by the ſame act, no manner of artificer, handicraftſman, huſbandman, apprentice, labourer, ſervant at huſbandry, journeyman, or ſervant of artificer, mariners, fiſhermen, watermen, or any ſerving man, ſhall play at the tables, tennis, dice, cards, bowls, claſh, coyting, logating, or any other unlawful game, out of *Chriſtmas*, on pain of 20 s, and in *Chriſtmas* to play at the ſaid games only in their maſters' houſes, or in their maſters' preſence; and alſo no perſon ſhall at any time play at bowls in open places out of his garden or orchard, on pain of 6 s 8 d. *id. ſ.* 16.

But any maſter may licence his ſervant to play at cards, dice, or tables with himſelf, or with any other gentleman openly in his houſe, or in his preſence. *id. ſ.* 22.

And any nobleman, or other perſon having 100 l a year, may command or licence his ſervants, or family of his houſe, to play within the precinct of his houſe, garden,

den, or orchard, at cards, dice, tables, bowls, or tennis, as well among themſelves, as others repairing to the ſame houſe. *id. ſ.* 23.

And all juſtices of the peace, mayors, bailiffs, ſheriffs, and other head officers, and every of them, *finding or knowing* any perſon uſing unlawful games, contrary to this act, may commit every ſuch offender to ward, there to remain without bail or mainprize, till he be bound by obligation to the king's uſe, in ſuch ſum as by the diſcretion of the ſaid juſtices, or other ſuch officers ſhall be thought reaſonable, that they ſhall not from thenceforth uſe ſuch unlawful games. *id. ſ.* 16.

And by the 2 *G.* 2. *c.* 28. Where it ſhall be *proved on the oath of two witneſſes* before any juſtice of the peace, as well as where he ſhall find upon his own view, that any perſon hath uſed any unlawful game contrary to the ſaid ſtatute; the ſaid juſtice ſhall have power to commit him to priſon without bail, unleſs and until he ſhall enter into recognizance, with ſureties, or without, at the diſcretion of the juſtice, that he ſhall not from thenceforth play at or uſe ſuch unlawful game. *ſ.* 9.

And where any the forfeitures abovementioned ſhall be found within the precincts of any leet, the lord ſhall have one half, and the other half ſhall be to him that ſhall ſue in any of the king's courts; and elſewhere, they ſhall be half to the king, and half to him that ſhall ſue in like manner. 33 *H.* 8. *c.* 9. *ſ.* 18.

But by the 31 *El. c.* 5. All ſuits to be purſued upon any ſtatute (that is, any ſtatute then in force) for uſing any unlawful game, ſhall be ſued and proſecuted, or otherwiſe heard and determined, in the general quarter ſeſſions or aſſizes of the county where the offence ſhall be committed, or in the leet within which it ſhall happen, and not in any wiſe out of the county. *ſ.* 7.

And no privilege of parliament ſhall be allowed to any perſon, againſt whom a proſecution ſhall be commenced, for keeping any common gaming houſe, or place for playing at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 7.

4. By the 30 *G.* 2. *c.* 24. If any perſon licenſed to ſell any ſorts of liquors, or who ſhall ſell or ſuffer the ſame to be ſold in his houſe, outhouſe, ground, or apartment thereto belonging, *ſhall knowingly ſuffer* any gaming with cards, dice, draughts, ſhuffle boards, miſſiſſipi, or billiard tables, ſkittles, nine pins, or with any other implement of gaming, in his houſe, outhouſe, ground, or apartment thereto belonging, by any journeymen, labourers, ſervants, or apprentices; and ſhall be convicted thereof

Gaming in publick houſes prohibited by the 30 G. 2. c. 24.

thereof on confeſſion, or oath of one witneſs, before one juſtice, within ſix days after the offence committed; he ſhall forfeit for the firſt offence 40 s, and for every other offence 10 l, by diſtreſs by warrant of ſuch juſtice; three fourths of which ſhall be to the church-wardens for the uſe of the poor, and one fourth to the informer. *ſ.* 14.

And if any journeyman, labourer, apprentice, or ſervant, *ſhall game* in any houſe, outhouſe, ground, or apartment thereto belonging, wherein any liquors ſhall be ſold; and complaint thereof ſhall be made on oath before one juſtice where the offence ſhall be committed: he ſhall iſſue his warrant to the conſtable or other peace officer of the place wherein the offence is charged to have been committed, or where the offender ſhall reſide, to apprehend and carry the offender before ſome juſtice of the place where the offence ſhall be committed, or where the offender ſhall reſide; and if ſuch perſon ſhall be convicted thereof by the oath of one witneſs or confeſſion, he ſhall forfeit not exceeding 20 s, nor leſs than 5 s, as the juſtice ſhall order, every time he ſhall ſo offend and be convicted as aforeſaid, one fourth to the informer, and three fourths to the overſeers for the uſe of the poor; and if he ſhall not forthwith pay down the ſame, ſuch juſtice ſhall commit him to the houſe of correction or ſome other priſon of the place where he ſhall be apprehended, to be kept to hard labour for any time not exceeding one month, or until he ſhall pay the forfeiture. *ſ.* 15.

And any juſtice unto whom complaint upon oath ſhall be made, of any offence committed againſt this act, ſhall iſſue his warrant for bringing before him or ſome other juſtice of ſuch place, the perſon charged with ſuch offence; and the juſtice before whom he is brought ſhall hear and determine the matter, and proceed to judgment and conviction: and if it ſhall appear upon oath to the ſatisfaction of ſuch juſtice, that any perſon within his juriſdiction can give material evidence on behalf of the proſecutor or of the perſon accuſed, and who will not voluntarily appear; he ſhall iſſue his ſummons to convene him to give his evidence; and if he ſhall neglect or refuſe to appear on ſuch ſummons, and no juſt excuſe ſhall be offered, then (on proof upon oath of the ſummons having been duly ſerved upon him) he ſhall iſſue his warrant to bring ſuch witneſs before him; and on his appearance, if he ſhall refuſe to be examined on oath, without offering juſt cauſe for ſuch refuſal, the juſtice ſhall commit him to the public priſon for any time not exceeding three months. *ſ.* 16.

And

And in all proceedings on this act, any perſon ſhall be admitted to be a witneſs, notwithſtanding his being an inhabitant of the place wherein the offence ſhall have been committed. *ſ.* 18.

And the juſtice before whom any perſon ſhall be convicted upon this act, ſhall cauſe the conviction to be drawn up in the form or to the effect following;

To wit. BE *it remembred, that on this* —— *day of* —— *in the* —— *year of his majeſty's reign* A. B. *is convicted before* —— *of his majeſty's juſtices of the peace for the ſaid county of* —— [or, *for the* —— *riding*, or *diviſion*, *of the ſaid county of* —— or, *for the city*, *liberty*, *or town of* —— as the caſe ſhall be] *for* —— *and* —— *the ſaid* —— *do adjudge him*, or her, *to pay and forfeit for the ſame*, *the ſum of* —— *Given under* —— *eth day and year aforeſaid.*

The ſame to be written upon parchment, and tranſmitted to the next ſeſſions, to be filed amongſt the records; and if any perſon ſhall appeal to the ſaid ſeſſions, the juſtices there ſhall, upon receiving the ſaid conviction, proceed to hear and determine the matter. *ſ.* 19.

And no certiorari ſhall be granted, to remove any proceedings on this act. *ſ.* 20.

And if any perſon convicted of any offence puniſhable by this act, ſhall think himſelf aggrieved by the judgment of the juſtice before whom he ſhall have been convicted, he may appeal to the next ſeſſions, and the execution of the judgment ſhall in ſuch caſe be ſuſpended, the perſon convicted entring into recognizance at the time of the conviction, with two ſureties in double the ſum he ſhall have been adjudged to pay, upon condition to proſecute ſuch appeal with effect, and to be forthcoming to abide the judgment and determination of the ſaid ſeſſions: and the ſeſſions ſhall award ſuch coſts as ſhall appear juſt and reaſonable to be paid by either party; and if the judgment ſhall be affirmed, the appellant ſhall immediately pay the ſum adjudged to be forfeited together with ſuch coſts as the court ſhall award, or in default thereof ſhall ſuffer the pains and penalties by this act inflicted upon perſons reſpectively who ſhall neglect to pay or ſhall not pay the forfeitures by this act to be paid. *ſ.* 21.

And no perſon puniſhed by this act, ſhall be puniſhed by any other law. *ſ.* 22.

5. By the 25 *G.* 2. *c.* 36. Any houſe, room, garden, or other place kept for public dancing, muſic, or other entertainment of the like kind, in *London*, or within 20 miles thereof, without licence as hereafter following (except

Gaming houſe within London and 20 miles thereof.

(except the theatres of *Drury-lane*, *Covent Garden*, the *Hay-market*, and other entertainments exerciſed by letters patents or licence of the crown, or of the lord chamberlain) ſhall be deemed a diſorderly houſe or place, and the keeper thereof ſhall forfeit 100 l, with full coſts, to him who ſhall ſue (in ſix months) in any of the courts at *Weſtminſter*. And the perſon who ſhall appear to act as maſter, or as having the management of ſuch diſorderly houſe, ſhall be deemed a keeper thereof.

Which ſaid licence ſhall be granted at the laſt preceding *Michaelmas* ſeſſions, and ſhall be ſigned and ſealed by four juſtices in open court, and afterwards be publickly read by the clerk of the peace, with the names of the juſtices ſubſcribing the ſame; and no licence ſhall be granted at any adjourned ſeſſions; nor ſhall any fee be taken for the ſame. And there ſhall be inſerted in ſuch licence, and made conditions thereof, that the words following ſhall be affixed in large capital letters over the door or entrance of every ſuch licenſed houſe or place, *viz. Licenſed purſuant to act of parliament of the twenty-fifth of king* George *the ſecond*; and that it ſhall not be opened before five in the afternoon. And in caſe of a breach of either of the ſaid conditions, the licence ſhall be forfeited, and revoked by the juſtices at the next ſeſſions, and ſhall not be renewed.

And to encourage proſecutions againſt perſons keeping bawdy houſes, gaming houſes, or other diſorderly houſes, the conſtable, on notice given him in writing by any two inhabitants of the pariſh paying ſcot and lot, of any perſon keeping ſuch houſe, ſhall forthwith go with them to a juſtice of the peace; and ſhall (on their making oath that they believe the contents of ſuch notice to be true, and entring into a recognizance of 20 l each to produce evidence of the offence,) enter into a recognizance of 30 l, to proſecute with effect ſuch perſon at the next ſeſſions or aſſizes, as to the juſtice ſhall ſeem meet: and on the conſtable entring into ſuch recognizance, the juſtice ſhall iſſue his warrant for bringing the accuſed perſons before him, and ſhall bind them over to appear at the ſaid ſeſſions or aſſizes, and ſhall alſo, if he thinks fit, demand and take ſurety for their good behaviour in the mean time.

And if the conſtable ſhall neglect or refuſe, upon ſuch notice, to go before a juſtice, or to enter into recognizance, or ſhall be wilfully negligent in carrying on the proſecution, he ſhall forfeit 20 l to each of the ſaid inhabitants.

And

And on trial, any perſon may give evidence againſt the defendant, notwithſtanding his being a pariſhioner, or having entred into ſuch recognizance.

And the conſtable ſhall be allowed all the reaſonable expences of the proſecution, to be aſcertained by two juſtices; and ſhall be paid the ſame by the overſeers of the poor: and if ſuch perſon be convicted, the overſeers ſhall alſo forthwith pay 10 l to each of ſuch inhabitants, on pain of forfeiting double to the ſaid perſons.

And no indictment of ſuch offence ſhall be removed by certiorari.

Loſing or winning 10 l or upwards at a time, or 20 l in 24 hours.

6. By the 9 *An. c.* 14. Any perſon who ſhall *at any time or ſitting*, by playing at cards, dice, tables, or *other game whatſoever*, or by betting on the ſides of ſuch as do play, *loſe* to any one or more perſons ſo playing or betting in the whole the ſum or value of 10 l, and ſhall pay or deliver the ſame, or any part thereof; the perſon ſo loſing and paying or delivering the ſame, ſhall be at liberty in three months to ſue for and recover the ſame with coſts, in any court of record: and if he ſhall not ſue in three months, it ſhall be lawful for any perſon to ſue for and recover the ſame and treble value, with coſts; half to ſuch perſon who ſhall ſue, and half to the poor. *ſ.* 2.

And every perſon who ſhall ſo be liable to be ſued for the ſame, ſhall be obliged and compellable to anſwer on oath ſuch bill as ſhall be preferred againſt him, for diſcovering the ſum of money or other thing ſo won. 9 *An. c.* 14. *ſ.* 3. 18 *G.* 2. *c.* 34. *ſ.* 3.

At any time or ſitting.] *M.* 19 *G.* 3. *Bones* and *Booth.* On a motion for a new trial, *Perryn* baron reported from the laſt *Briſtol* aſſizes, that the action was brought to recover back 14 guineas won by gaming, upon the ſtatute of 9 *An.* The play was at a coffee houſe in *Briſtol.* They played at all-fours for 2 guineas a game, from Monday evening to Tueſday evening, without any interruption, except for an hour or two at dinner, but the plaintiff and defendant never parted company. It was inſiſted at the trial, that this was not won at any *one* ſitting, ſo as to fall within the ſtatute, becauſe the dinner had intervened. But the judge thought otherwiſe: however, the jury found a verdict for the defendant, much to the diſſatisfaction of the judge. On ſhewing cauſe, it was inſiſted, that a new trial in an action for a penalty was unprecedented: And that as both parties were gamblers, neither was intitled to any favour or indulgence from the court.—*Gould* juſtice (in the abſence of *De Grey* chief juſtice) was clearly for grant-

granting a new trial, the verdict being manifeſtly contrary to evidence. The ſtatute (with reſpect to the party loſing) is *remedial*, not *penal*. He is to recover back his money, and to that end the 3d ſection of the ſtatute allows a bill in equity for a diſcovery; which plainly ſhews that it was not conſidered as a penal ſtatute. Had this been a proceeding on that branch of the ſtatute, which inflicts pillory or other corporal puniſhment, it had been otherwiſe.—*Blackſtone* juſtice, of the ſame opinion. The ſtatute makes the winning of 10l at one *time* or *ſitting*, a nullity; and therefore gives the loſer an action to recover back what ſtill properly continues to be his own money. To loſe 10l at one *time*, is to loſe it by a ſingle ſtake or bet; to loſe at one *ſitting* is to loſe it in a courſe of play where the company never parts, tho' the perſon may not be actually gaming the whole time.—*Nares* juſtice, of the ſame opinion. The ſtatute is *remedial* where the action is brought by the party injured, but *penal* where brought by a common informer.—And the rule was made abſolute for a new trial. *Black. Rep.* 1226.

Or other game whatſoever.] *M.* 13 *G.* 2. *Goodburn* and *Marley*. It was determined, that *horſe races* are within theſe general words. *Str.* 1159. So alſo in the caſe of *Blaxton* and *Pye*, *E.* 6 *G.* 3. 2 *Wilſon.* 309.

And in the caſe of *Lynall* and *Longbotham*, *M.* 30 *G.* 2. it was admitted on all hands that a *foot race* alſo is within the ſtatute, and that a footman running againſt time is a foot race; but in this caſe, for a flaw in the declaration in not laying the fact cloſe enough to the words of the ſtatute, the defendant had judgment. 2 *Wilſ.* 36.

In the caſe of *Clayton* and *Jennings*, *E.* 10 *G.* 3. On an action for 5 guineas won by betting at a horſe race, it appeared that the bet was 10 guineas by the plaintiff, to 5 by the defendant. The plaintiff won, and obtained a verdict. It was moved in arreſt of judgment, that there was no mutuality in the wager; for as by reaſon of the ſtatute the defendant could not have recovered the 10 guineas, therefore the plaintiff ſhall not now recover the five. And of that opinion was the court. And *Aſton* juſtice mentioned the caſe of *Conner* and *Quick* in the king's bench about ten years before, when the court took a diſtinction between running a horſe for 50l, which was lawful; and betting on the ſide of the horſe, which was not ſo. And in the preſent caſe, by the opinion of the whole court, judgment was arreſted. *Black. Rep.* 706.

By the ſame ſtatute of the 9 *An.* *c.* 14. If any perſon ſhall, at any one time or ſitting, *win* of any one or more perſon or perſons, above the ſum or value of 10 l; he ſhall upon conviction on indictment or information, forfeit five times the value of the ſum of money or other things ſo won, to be recovered by ſuch perſon as ſhall ſue for the ſame. *ſ.* 5.

And by the 18 *G.* 2. *c.* 34. If any perſon ſhall *win* or *loſe* at play, or by betting, at any one time, the ſum or value of 10 l, or within the ſpace of 24 hours the ſum or value of 20 l; he ſhall be liable to be indicted for ſuch offence, in ſix months, either in the king's bench or at the aſſizes; and being convicted, ſhall be fined five times the value of the ſum won or loſt, which (after ſuch charges as the court ſhall judge reaſonable, allowed thereout to the proſecutor and evidence) ſhall go to the poor. *ſ.* 8.

And if any offender ſhall diſcover another offender, ſo that he be convicted, the diſcoverer ſhall be diſcharged from all penalties by reaſon of ſuch offence, if not before convicted thereof, and ſhall be admitted as an evidence to prove the ſame. *ſ.* 9.

But nothing in this act ſhall repeal the aforeſaid act of 9 *An.* id. ſ. 10.

7. If any perſon ſhall play at cards, dice, tables, tennis, bowls, kittles, ſhovelboard, or any other paſtime or game whatſoever (other than for ready money) or bet on the ſides of ſuch as ſhall play, and ſhall loſe any ſum or other thing, exceeding 100 l, at any one time or meeting, upon ticket, or credit, or otherwiſe, and ſhall not pay down the ſame at the time when he ſhall loſe the ſame; in ſuch caſe he ſhall not be bound to make it good, but the contract for the ſame, and for every part thereof, and all aſſurances and ſecurities for the ſame ſhall be void; and the winner ſhall forfeit treble value of all ſuch ſums as he ſhall ſo win above 100 l, half to the king, and half to him that ſhall ſue in one year in any of the courts of record at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 3. Loſing above 100 l at a time.

In the caſe of *Humphries* and *Rigby*, *M.* 1698. A bill was brought, to be relieved againſt a bond for money won at all-fours. The plaintiff was a diſtiller, and the defendant a tapſter at a bowling green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was Jack, ſeveral times together; and being an unreaſonable ſum for ſuch perſons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, altho' this caſe was not within the ſtatute, the bond being

being for leſs than 100 l. For equity always relieved before the ſtatute, where any fraud appeared. 2 *Abr. Eq. Caſ.* 184.

Securities to be void.

8. And all notes, bills, bonds, judgments, mortgages, or other ſecurities, where the whole or any part of the conſideration ſhall be for money or any other valuable thing won by playing at cards, dice, tables, tennis, bowls, or other game whatſoever; or by betting on the ſides of ſuch as do game; or for the reimburſing or repaying any money knowingly lent or advanced, at the time and place of ſuch play, to any perſon ſo gaming or betting, or that ſhall (during ſuch play) ſo play or bett, —ſhall be void: And where ſuch ſecurities ſhall be of lands, or ſuch as incumber or affect the ſame; they ſhall enure and be to the ſole uſe and benefit of, and devolve upon ſuch perſon as might have ſuch lands, in caſe the ſaid grantor, or perſon ſo incumbring the ſame, had been dead: And all conveyances to hinder them from devolving on ſuch perſon, ſhall be void. 9 *An. c.* 14. *ſ.* 1.

Securities] *H.* 19 *G.* 2. *Barjeau* and *Walmſley*. The plaintiff and defendant gamed together, at toſſing up for five guineas at a time. And the plaintiff having won all the defendant's ready money lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was inſiſted for the defendant, that by the 9 *An. c.* 14. the plaintiff could maintain no action; for by that act, all *ſecurities* for money lent to game with ſhall be void; and the borrowing on an agreement to pay, is *a ſecurity*. But *Lee* Ch. J. held that this was not a caſe within the act, for there is not the word *contract*, as in the ſtatute of uſury; and the word *ſecurities*, as it ſtands in this act, muſt mean laſting liens upon the eſtate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written ſecurities. Wherefore the plaintiff obtained a verdict for 126 l. *Str.* 1249.

In the caſe of *Rawdon* and *Shadwell*, *Apr.* 23, 1755. A bill was brought by the plaintiff for an injunction, and that the defendant might deliver up the plaintiff's bond for 1150 l, for money loſt at play, and might refund a ſum of 150 l, paid by the plaintiff in part of the ſaid bond. It appeared, that the plaintiff was a lieutenant, and the defendant a captain in Cotterel's regiment; and about 14 years ago, being quartered at Leeds in Yorkſhire, the defendant won of the plaintiff in one evening the ſum of 1150 l. The plaintiff was under age; and being ſo, gave a bond

a bond for the money to the defendant; and afterwards, when of age, paid 150l in part. It was inſiſted for the plaintiff, that the ſecurities by the ſtatute of the 16 *C.* 2. were totally void, and ought to be delivered up; that the property of an infant in money loſt at play, is not altered, and therefore trover would lie; and the ſtatute of the 9 *An.* was mentioned, and a caſe in 2 *Mod.* 91. For the defendant, it was urged, that the plaintiff on the ſame evening won of another in the ſame company, to wit, the ſurgeon of the regiment, a larger ſum than the 115ol, which has been paid by him. That fair gaming is not *malum in ſe.* It is only prohibited *ſub modo.* That the caſe cited was of money loſt with falſe dice, which the court takes cognizance of as a cheat. That the ſtatute of *An.* gives the court juriſdiction only as to a diſcovery. That as to the 150l, it was paid after he came of age; and if the court ſhould order the defendant to refund at the diſtance of 14 years, it would occaſion an infinite number of applications. That the ſtatute of 16 *C.* 2. gives no remedy to recover money already paid. That there has been too long an acquieſcence. That money paid, even in caſes of bribery and corruption, cannot be recovered at law. That the ſtatute of *An.* has directed an action within three months, for money loſt and paid at play.—The lord chancellor ſaid, the decree he ſhould make was not founded on any imputation on the character of the defendant, who had put in a very candid anſwer. But this is a breach of the law, from a falſe principle of honour. And he was of opinion, that the plaintiff was intitled to the whole relief prayed; that a party may come into this court to have a void ſecurity delivered up; that refunding the money is of courſe, as the ſtatute has made the ſecurity void to all intents and purpoſes.

T. 11 *G.* 3. Earl of *March* and *Pigot.* The cauſe was on a contract made at *Newmarket.* A wager was originally propoſed between young Mr. *Pigot* the defendant, and young Mr. *Codrington*, to run their fathers (to uſe the phraſe of that place) each againſt the other. Sir *William Codringdon*, the father of Mr. *Codrington*, was then a little turned of fifty; Mr. *Pigot*'s father was upwards of ſeventy. Lord *Oſſory* computed the chances, in the proportion of 500 to 1600 guineas, according to the ages of their reſpective fathers. Mr. *Codrington* thought the computation was made too much in his diſfavour. Whereupon lord *March* agreed to ſtand in Mr. *Codrington*'s place. And reciprocal notes were accordingly given between the earl and Mr. *Pigot.* It happened, that at the time of this tranſ-

tranſaction, Mr. *Pigot*'s father was dead, unknown and unſuſpected by any of the parties. He died in *Shropſhire*, 150 miles from *London*, at two of the clock in the morning of the ſame day, on which this bet was made at *Newmarket* after dinner. On the trial, the jury gave a verdict for the plaintiff, with 525l damages. It was moved for a new trial. The objection was, That the contract was void, as being without any conſideration. For there was no poſſibility of the defendant's winning (his father being then actually dead), and therefore he ought not to loſe: It was a contract *in future*, manifeſtly made upon a ſuppoſition of a then future contingency.—By lord *Mansfield* chief juſtice: The queſtion is, What the parties really meant? The material contingency was, Which of theſe two young heirs ſhould firſt come to his father's eſtate? It was not known that the father of either of them was then dead. Their lives, their healths, were neither warranted nor excepted. It was equal to both of them, whether one of their fathers ſhould be then ſick or dead. All the circumſtances ſhew, that if it had been then thought of, it would not have made any difference in the bet; and there was no reaſon to preſume that they would have excepted it. The intention was, that he who firſt came to his eſtate ſhould pay this ſum of money to the other who ſtood in need of it.—And the court unanimouſly diſcharged the rule for a new trial. *Bur. Mansf.* 2802.

Perſons ſuſpected of ſupporting themſelves by gaming.

9. And any two juſtices may cauſe to come, or to be brought before them, every perſon whom they ſhall have juſt cauſe to ſuſpect to have no viſible eſtate, profeſſion, or calling, to maintain themſelves by, but do for the moſt part ſupport themſelves by gaming; and if ſuch perſon ſhall not make it appear to the ſaid juſtices, that the principal part of his expences is not maintained by gaming, they ſhall require of him ſufficient ſecurities for his good behaviour for twelve months, and in default of his finding ſuch ſecurities, ſhall commit him to the common gaol, until he ſhall find ſuch ſecurities as aforeſaid. 9 *An. c.* 14. *ſ.* 6.

And if he ſhall, during the time for which he ſhall be bound, at any one time or ſitting, play or bet for any ſums or other thing exceeding in the whole the value of 20s; ſuch playing ſhall be deemed a forfeiture of the recognizance. *ſ.* 7.

Cheating.

10. If any perſon ſhall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, ſhovelboard; or by cockfightings, horſe

horſe races, dog matches, foot races, or other paſtimes or games; or by bearing a ſhare in the ſtakes; or by betting on the ſides of ſuch as ſhall play, act, ride, or run as aforeſaid,—win any ſum or other valuable thing; he ſhall forfeit treble the value, half to the king and half to the party grieved (if he ſhall ſue in ſix months), otherwiſe to any perſon who ſhall ſue in one year next after the ſaid ſix months, in any of the courts of record at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 2.

And by the 9 *An. c.* 14. If any perſon ſhall by any fraud or ſhift, couſenage, circumvention, deceit, or unlawful device, or ill practice whatſoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforeſaid, or bearing a ſhare in the ſtakes, or betting on the ſides of ſuch as do play, win any ſum of money or other valuable thing, and ſhall be convicted thereof upon indictment or information; he ſhall forfeit five times the value of ſuch money or other thing ſo won, and ſhall be deemed infamous and ſuffer ſuch corporal puniſhment as in caſes of wilful perjury; and ſuch penalty to be recovered by ſuch perſon as ſhall ſue for the ſame, by ſuch action as aforeſaid. *ſ.* 5.

T. 9 *G.* 2. *K.* and *Luckup.* The defendant was convicted on an information upon this act, which ſays, that he ſhall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine ſhould be ſet upon the defendant, if he refuſed to ſpeak with the proſecutor. But by the court, All the judgment that we can give is, *that he is convicted*; and a new action muſt be brought upon that judgment for the forfeiture, which was thought ſufficient to deter the offenders. In the caſe of recuſancy, there is no other judgment. And the defendant was diſcharged, without any fine or coſts. *Str.* 1048.

11. And for the preventing ſuch quarrels as may happen on the account of gaming; if any perſon ſhall aſſault and beat, or challenge to fight, any other perſon whatſoever, on account of any money won by gaming, playing, or betting, at any the games aforeſaid, he ſhall on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and perſonal eſtate whatſoever, and ſhall alſo ſuffer impriſonment without bail or mainprize, in the common gaol of the county where the conviction ſhall be had, during the term of two years. 9 *An. c.* 14. *ſ.* 8. Quarrelling.

12. It is generally provided by the ſeveral ſtatutes, that nothing therein ſhall hinder any perſon from playing at any Royal palaces excepted.

any the games aforeſaid, within any of the king's royal palaces, where he ſhall then reſide.

Lottery a nuſance.

13. By the 10 & 11 *W.* *c.* 17. All lotteries are declared to be publick nuſances; and all grants, patents, and licences, for ſuch lotteries, to be againſt law. *ſ.* 1.

Keeping or playing at a lottery.

14. No perſon ſhall expoſe to be played, drawn, or thrown at, or ſhall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatſoever; and every perſon who ſhall expoſe to be played, drawn, or thrown at, any ſuch lottery, play, or device, ſhall forfeit 500 l, one third to the king, one third to the poor, and one third with double coſts to him that ſhall ſue in the courts at *Weſtminſter*; and the offenders ſhall likewiſe be proſecuted as common rogues, according to the ſtatutes in that caſe made and provided. 10 & 11 *W.* *c.* 17. *ſ.* 2.

And every perſon who ſhall play, throw, or draw at any ſuch lottery, play, or device, ſhall forfeit 20 l in like manner. *ſ.* 3.

And all juſtices of the peace, mayors, conſtables and other civil officers ſhall uſe their utmoſt endeavours to prevent the drawing of any ſuch unlawful lottery, by all lawful ways and means; and every perſon who ſhall ſet up, or by writing or printing publiſh the ſetting up any ſuch unlawful lottery, with intent to have ſuch lottery drawn, ſhall forfeit 100 l, one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue in the courts at *Weſtminſter*. 9 *An.* *c.* 6. *ſ.* 56.

Inſurances.

15. Every perſon who ſhall keep any office or place, for making inſurances on marriages, births, chriſtnings, or ſervice, or any other office or place, under the denominations of ſales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of ſmall ſums of money, ſhall forfeit 500 l; one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue. And every printer, or other perſon, who ſhall by writing or printing publiſh the ſetting up or keeping any ſuch office or place, ſhall forfeit 100 l in like manner. 10 *An.* *c.* 26. *ſ.* 109.

Sales of lands or goods; and chances in publick lotteries.

16. Every perſon who ſhall keep any office or place, under the denomination of ſales of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things, for the improvement of ſmall ſums of money; or ſhall ſell or expoſe to ſale the ſame or any of them, by way of lottery, or by lots, tickets, numbers, or figures;

figures; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums of money by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by the chances of the prizes in ſome publick lottery; or ſhall deliver out tickets, to the perſons advancing ſuch ſums, to intitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall make, print or publiſh, any propoſal or ſcheme of the like nature, under any denomination whatſoever,——and ſhall be thereof convicted, on oath of one witneſs, by two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by any former act made againſt private lotteries, forfeit 500 l, one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs and ſale by warrant of ſuch juſtices, and ſhall alſo by ſuch juſtices be committed to the county gaol without bail for one whole year, and from thence till the ſaid ſum of 500 l ſhall be paid: Provided that perſons aggrieved may appeal to the next quarter ſeſſions. And every perſon who ſhall be adventurer in, or any way contribute on the account of any ſuch ſales, lotteries, propoſals, or ſchemes, ſhall forfeit double the ſum contributed, with coſts, half to the king, and half to him who ſhall ſue in the courts at Weſtminſter. 8 *G.* *c.* 2. *ſ.* 36, 37.

And by the 12 *G.* 2. *c.* 28. If any perſon ſhall erect, ſet up, continue, or keep, any office or place, under the denomination of a ſale of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards, or dice; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by chances of the prizes in ſome publick lottery eſtabliſhed by act of parliament, or ſhall deliver out tickets to the perſons advancing ſuch ſums, to intitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall expoſe to ſale any houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, or other goods, by any game, method, or device whatſoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatſoever;—— he ſhall, on conviction before any juſtice of the peace (or mayor) on the oath of one witneſs, or view of ſuch

juſtice, or confeſſion, forfeit 200 l, by diſtreſs and ſale, by warrant of one juſtice of the county or town where the offence ſhall be committed; which ſaid forfeiture (after deducting reaſonable charges of the proſecution) ſhall go one third to the informer, and two thirds to the poor of the pariſh (except in *Bath*, where the ſaid two thirds ſhall go to the poor of the hoſpital there). *ſ.* 1.

And if the offender ſhall not have ſufficient goods, whereon to levy the penalties, or ſhall not immediately pay or give ſecurity for the ſame; the juſtice before whom he ſhall be convicted, may commit him to the common gaol, not exceeding ſix months. *ſ.* 8.

And if any witneſs ſhall neglect or refuſe to appear, upon ſummons, or ſhall refuſe to give evidence, or give falſe evidence; he ſhall forfeit 50 l, by diſtreſs, by warrant of the perſon iſſuing ſuch ſummons: and if he have not ſufficient goods whereon to levy the 50 l, he ſhall be committed to the common goal for ſix months. 18 *G.* 2. *c.* 34. *ſ.* 4.

But if any perſon think himſelf aggrieved by the judgment of any juſtice or mayor, he may appeal to the next ſeſſions, giving reaſonable notice to the proſecutor, and entring into a recognizance before ſome juſtices of the peace where the conviction was made, with two ſureties, on condition to try ſuch appeal at ſuch next ſeſſions. And if the conviction ſhall be affirmed, the party appealing ſhall pay to the proſecutor treble coſts. 12 *G.* 2. *c.* 28. *ſ.* 5.

And no conviction ſhall be quaſhed by the ſeſſions for want of form; nor ſhall be removed by certiorari, till after determination in the ſeſſions. *id. ſ.* 6.

And if any juſtice, or mayor, ſhall neglect his duty herein; he ſhall forfeit 10 l, with full coſts, half to him that ſhall ſue (in ſix months) in any court of record or at the aſſizes, and half to the poor. *id. ſ.* 9.

Moreover, every ſuch ſale of houſes, lands, advowſons, preſentations, plate, jewels, ſhips, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, ſhall be void; and the ſame being expoſed to ſale in manner aforeſaid, ſhall be forfeited to ſuch perſon as ſhall ſue for the ſame in any court of record, or at the aſſizes. *id. ſ.* 4.

And, finally, every perſon who ſhall be an adventurer in any of the ſaid games, lotteries, or ſales, ſhall forfeit 50 l in like manner. *id. ſ.* 3.

Ace of hearts, faro, baſſet, and hazard.

17. The game of ace of hearts, faro, baſſet, and hazard, ſhall be deemed games, or lotteries by cards or dice; and

and every perſon who ſhall ſet up, or keep theſe games, ſhall be liable to all the abovementioned penalties, for ſetting up or keeping any the games or lotteries in this act mentioned. 12 *G.* 2. *c.* 28. *ſ.* 2.

And every perſon who ſhall play, ſet at, ſtake, or punt at any of the ſaid games, ſhall forfeit 50*l* in like manner. *ſ.* 3.

18. Alſo the game of paſſage, and every other game with one or more die or dice, or with any other inſtrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables, only excepted), ſhall be deemed games or lotteries by dice, within the ſaid act of 12 *G.* 2. *c.* 28.—13 *G.* 2. *c.* 19. *ſ.* 9. Paſſage.

19. Alſo by the 18 *G.* 2. *c.* 34. No perſon ſhall keep any houſe, room, or place for playing, or ſuffer any perſon within ſuch place to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any perſon ſhall keep ſuch houſe, or ſuffer any perſon to play at roly poly, or other game with cards or dice prohibited by law, he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 *G.* 2. *c.* 28. —18 *G.* 2. *c.* 34. *ſ.* 1. Roly-poly.

And if any perſon ſhall play at roly poly, or any game with cards or dice prohibited by law; he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 *G.* 2.—18 *G.* 2. *c.* 34. *ſ.* 2.

20. If any perſon ſhall, by colour of any grant from any foreign prince or ſtate, ſet up any lottery, or undertaking in the nature of a lottery, under any denomination whatſoever; or ſhall make, print, or publiſh any propoſal for any ſuch lottery or undertaking; or ſhall ſell or diſpoſe of any ticket in any foreign lottery; and ſhall be convicted thereof, on oath of one witneſs, before two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall over and above any penalties by former acts againſt unlawful lotteries, forfeit 200 *l*, one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo by them be committed to the county gaol for one year, and from thence till the ſaid ſum of 200 *l* be paid: Provided, that perſons aggrieved may appeal to the next quarter ſeſſions. 9 *G.* *c.* 19. *ſ.* 4, 5. Foreign lotteries.

And by the 6 *G.* 2. *c.* 35. If any perſon ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any claſs, part or diviſion thereof, or in any undertaking in the na-

ture of a lottery; or ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or ſhall receive any money for any ſuch ticket, receipt, chance, or number, or in conſideration of any money to be repaid in caſe any ticket or number in any foreign or pretended foreign lottery, or any claſs, part, or diviſion thereof, ſhall prove fortunate; and ſhall be convicted thereof in the courts at *Weſtminſter*, or on the oath of one witneſs before two juſtices where the offence ſhall be committed, or the offender ſhall be found; he ſhall forfeit 200 l, one third to the king, one third to the informer, and one third to the poor; the ſame (in caſe of conviction before the juſtices) to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo be committed to the common gaol for a year, and from thence till the 200 l be paid; provided, that perſons aggrieved may appeal to the next quarter ſeſſions. *ſ.* 29, 30.

How far an offender may be a witneſs.

21. No perſon, other than the plaintiff and defendant, ſhall be incapacitated from being a witneſs, touching any offence againſt the laws for preventing exceſſive and deceitful gaming, by reaſon of having played, betted, or ſtaked at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 5.

Gaol and gaoler.

For breaking of gaol, ſee **Priſon breaking.**

There is no word in the Engliſh tongue that hath ſuffered ſo much abuſe as the word *gaol*. It is frequently written *goal*; whereas the words are totally different both in ſenſe and pronunciation. *Goal* is the ſtarting and ending poſt at a horſe race: and to ſend a man thither inſtead of ſending him to priſon, is not conſiſtent with that ſtrictneſs which is juſtly required by our laws in caſes penal. It is a fault of which juſtices' clerks and printers are equally guilty.—Whether a gaoler is obliged to receive a commitment, addreſſed not to him, but to another perſon, is a point that hath not yet been conſidered.

I. Build-

I. Building and repairing of gaols.
II. Who ſhall have the keeping of gaols.
III. Gaoler ſhall receive criminals.
IV. How ſhall they be maintained.
V. Selling of ſtrong liquors in gaols.
VI. How priſoners may be ſet on work.
VII. How they ſhall be reſtrained and kept.
VIII. Of clergymen to officiate in gaols.
IX. How priſoners ſhall be delivered.
X. Of gaolers permitting eſcapes.
XI. Concerning debtors.
XII. Concerning the priſons of the King's bench *and* Marſhalſea.

I. Building and repairing of gaols.

THE juſtices, or the greater number of them, within the limits of their commiſſion, upon preſentment of the grand jury at the aſſizes (or ſeſſions, 12 *G.* 2. *c.* 29. *ſ.* 13.) of the inſufficiency or inconveniency of the county gaol, may contract with any perſon for the building, finiſhing, or repairing the ſame. 11 & 12 *W.* *c.* 19. *ſ.* 1, 2. The expence thereof to be paid by the treaſurer, out of the general county rate. 12 *G.* 2. *ſ.* 29.

But this ſhall not extend to gaols held by inheritance; nor to charge any perſons in any town or liberty which have common gaols for felons, and commiſſioners of aſſize or gaol delivery, for any aſſeſſment to the making the common gaol for the ſhire. 11 & 12 *W.* *c.* 19. *ſ.* 4, 5.

II. Who ſhall have the keeping of goals.

The gaol itſelf is the king's, but the keeping thereof is incident to the office of the ſheriff, and inſeparable from it; except ſuch gaols whereof any perſons have the keeping by inheritance or ſucceſſion. 14 *Ed.* 3. *ſt.* 1. *c.* 10. 19 *H.* 7. *c.* 10. 2 *Inſt.* 589.

And therefore the ſheriffs ſhall put in ſuch keepers for whom they will anſwer. 14 *Ed.* 3. *ſt.* 1. *c.* 10.

But by the 3 *G.* *c.* 15. *ſ.* 10. None ſhall buy the office of gaoler, on pain of 500 l; half to the king, and half to him that ſhall ſue.

And a gaoler in fact, is as much puniſhable for a miſdemeanor in his office, as if he were a rightful gaoler. 2 *Haw.* 134.

III. Gaoler ſhall receive criminals.

All felons ſhall be impriſoned in the common gaol, and not elſewhere. 5 *H.* 4. *c.* 10.

And if the gaoler refuſes to receive a felon, or take any thing for receiving him, he ſhall be puniſhed for the ſame by the juſtices of gaol delivery. 4 *Ed.* 3. *c.* 10. *Dalt.* *c.* 170.

But vagrants and other criminals, offenders, and perſons charged with ſmall offences, may for ſuch offences, or for want of ſureties, be committed either to the common gaol, or houſe of correction, as the juſtices in their judgment ſhall think proper. 6 *G.* *c.* 19.

IV. How they ſhall be maintained.

Lord *Coke* ſays, the gaoler cannot refuſe the priſoner victuals, for he ought not to ſuffer him to die for want of ſuſtenance. 1 *Inſt.* 295.

But this is denied by others; and as there are ſeveral ſtatutes which provide for the maintenance of priſoners, without ſuppoſing the gaoler any way obliged to it, it ſeemeth that this opinion is not maintainable. *Bac. Abr.* Gaol, gaoler. F.

For by the 14 *El.* *c.* 5. and 12 *G.* 2. *c.* 29. they are to be provided for by a ſum to be paid out of the general county rate, by the high conſtables, to ſuch ſufficient perſons dwelling nigh the gaols, as ſhall be appointed by the juſtices in open ſeſſions, who ſhall be there ready to receive it.

V. Selling of ſtrong liquors in gaols.

By the 24 *G.* 2. *c.* 40. No licence ſhall be granted for retailing *ſpirituous liquors* within any gaol or priſon; and if the gaoler ſhall ſell, lend, uſe, or give away, or ſuffer the ſame (except by way of medicine); he ſhall forfeit 100 l, half to the king, and half with full coſts to him who ſhall ſue. *ſ.* 17.

And

And any juſtice, on information on oath, that ſpirituous liquors are kept or diſpoſed of in ſuch gaol, may enter and ſearch, or iſſue his warrant to ſearch for, and ſeize, and ſtave, and deſtroy the ſame. *ſ.* 18.

And if any perſon ſhall endeavour to bring any ſpirituous liquors into ſuch gaol, the gaoler or his ſervants may apprehend and carry him before a juſtice; and if by the oath of one witneſs or otherwiſe ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine, not exceeding 20 l, and not leſs than 10 l, as the juſtice ſhall impoſe, to be paid half to the informer, and half to the poor of ſuch gaol. *ſ.* 19.

And a copy of the three clauſes above, ſhall be hung up in each gaol, on pain of the gaoler forfeiting 40 s, to be levied by warrant of one juſtice, on conviction on the oath of one witneſs: And any juſtice may enter and demand a ſight of ſuch copy, and if not ſhewn to him, he ſhall immediately convict ſuch gaoler: one half of the ſaid penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of ſuch gaol. *ſ.* 20.

And by the 29 *G.* 2. *c.* 12. No perſon ſhall retail *ale*, *beer*, or other liquors, in any priſon, without being licenſed in like manner as alehouſe-keepers.

VI. How priſoners may be ſet on work.

The juſtices in their general ſeſſions, if they find it needful, may provide a ſtock of ſuch materials as they find convenient for the ſetting poor priſoners on work, to be paid for by the treaſurer out of the general county rate; and may pay and provide fit perſons to overſee and ſet ſuch priſoners on work; and make ſuch orders for accounts concerning the premiſſes, as ſhall be thought needful, and for puniſhment of neglect and other abuſes, and for beſtowing the profits ariſing by the labour of the priſoners for their relief. Provided that the ſum to be ſo paid do not exceed the rate of 6d a week for any one pariſh. 19 *G.* 2. *c.* 4. *ſ.* 1. 12 *G.* 2. *c.* 29.

VII. How they ſhall be reſtrained and kept.

The county gaol is the priſon for malefactors; but priſoners for debt, where eſcape lies againſt the ſheriff for

their eſcaping, may be kept in what place the ſheriff pleaſes. L. *Raym.* 136.

By the 31 *C.* 2. *c.* 2. If any perſon ſhall be committed to any priſon, for any criminal or ſuppoſed criminal offence, he ſhall not be removed from thence, unleſs it be by *habeas corpus* or ſome other legal writ; or where he is removed from one priſon or place to another, within the ſame county, in order to his trial or diſcharge; or in caſe of ſudden fire or infection, or other neceſſity: On pain that the perſon ſigning any warrant for ſuch removal, and the perſon executing the ſame, ſhall forfeit for the firſt offence 100 l, and for the ſecond 200 l, to the party grieved. *ſ.* 9.

But on emergent occaſions, as in caſe of infectious diſeaſes, the ſheriff or gaoler, with the advice and conſent of three or more juſtices (1 *Q.*) may, if they ſhall find it needful, provide other ſafe places (with the owner's conſent) for the removal of ſick or other perſons out of the uſual gaols. 19 *C.* 2. *c.* 4. *ſ.* 2.

By the 22 & 23 *C.* 2. *c.* 20. The gaoler ſhall not put, keep, or lodge priſoners for debt and felons together in one room or chamber; but they ſhall be put, kept, and lodged ſeparate and apart from one another in diſtinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. *ſ.* 13.

Nevertheleſs it ſeemeth generally in all caſes where a man is committed to priſon, eſpecially if it be for felony, or upon an execution, or but for a treſpaſs or other offence, every gaoler ought to keep ſuch priſoner in ſafe and cloſe cuſtody; ſafe, that he cannot eſcape; and cloſe, without conference with others or intelligence of things abroad. *Dalt. c.* 170.

And therefore if the gaoler ſhall licenſe his priſoner to go abroad for a time, and then to come again, or to go abroad with a keeper, though he come again, yet theſe are eſcapes. *Dalt. c.* 170.

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his eſcape. 1 *H. H.* 601. *Dalt. c.* 170. and it is ſaid, that a gaoler is no way puniſhable for keeping even a debtor in irons. 2 *Haw.* 152.

But the learned editor of *Hale's Hiſtory* obſerves, that this liberty even in the caſe of a felon (much more in the caſe of a priſoner for debt) can only be intended, where the officer has juſt reaſon to fear an eſcape; as where the priſoner is unruly, or makes any attempt to that purpoſe; but otherwiſe, notwithſtanding the common practice of

gaolers, it ſeems altogether unwarrantable, and contrary to the mildneſs and humanity of the laws of *England*, by which gaolers are forbidden to put their priſoners to any pain or torment. And lord *Coke*, 2 *Inſt.* 381. is expreſs, that by the common law it might not be done. 1 *H. H.* 601.

And if the gaoler keep the priſoner more ſtrictly than he ought of right, whereof the priſoner dieth, this is felony in the gaoler by the common law; And this is the cauſe, that if a priſoner die in gaol, the coroner ought to ſit upon him; and if the death was owing to cruel and oppreſſive uſage on the part of the gaoler or any officer of his, it will be deemed wilful murder in the perſon guilty of ſuch dureſs. 3 *Inſt.* 91. *Foſt.* 321, 322.

But if a criminal, endeavouring to break the goal, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. 1 *H. H.* 496. For gaolers and their officers are under the ſame ſpecial protection that other miniſters of juſtice are. And therefore if in the neceſſary diſcharge of their duty they meet with reſiſtance, whether from priſoners in civil or criminal ſuits, or from others in behalf of ſuch priſoners, they are not obliged to retreat as far as they can with ſafety, but may freely and without retreating repel force with force. And if the party ſo reſiſting happeneth to be killed, this on the part of the gaoler, or his officer, or any perſon coming in aid of him, will be juſtifiable homicide. On the other hand, if the gaoler, or his officer, or any perſon coming in aid of him, ſhould fall in the conflict, this will amount to wilful murder in all perſons joining in ſuch reſiſtance. It is homicide committed in defiance of the juſtice of the kingdom. *Foſt.* 321.

But foraſmuch as the gaol is intended, in moſt caſes, for cuſtody and not for puniſhment; and confinement itſelf in ſuch diſmal abodes is ſufficiently afflictive and diſconſolate; human nature will plead for thoſe miſerable objects, that their condition be rendred as tolerable as the caſe will admit of; particularly with regard to cleanlineſs, which is the parent of health; and wholeſome air, which is life itſelf. A remarkable effect of want of care in this reſpect, Sir *Michael Foſter* takes notice of, in the caſe of one Mr. *Clarke*, who was brought to his trial at the *Old Bailey* ſeſſions in *April* 1750. It being a caſe of great expectation, the court and all the paſſages to it were extremely crouded. The weather alſo was hotter than is uſual at that time of the year. Many people who were in court, were ſenſibly affected with a very noiſome

ſmell,

ſmell. And it appeared ſoon afterwards, upon an inquiry ordered by the court of aldermen, that the whole priſon of *Newgate*, and all the paſſages leading thence into the court, were in a very filthy condition, and had long been ſo. What made theſe circumſtances to be at all attended to was, that within a week or ten days at moſt after the ſeſſions, many people who were preſent at Mr. *Clarke*'s trial, were ſeized with a fever of the malignant kind, and few who were ſeized recovered. The ſymptoms were much alike in all the patients; and in leſs than ſix weeks the diſtemper intirely ceaſed. At the time this diſaſter happened, there was no ſickneſs in the gaol, more than is common in ſuch places. Which circumſtance, that diſtinguiſheth this from moſt of the caſes of the like kind which we have heard of, ſuggeſts a very proper caution, not to preſume too far upon the health of the gaol, barely becauſe the gaol fever is not among the priſoners. For without doubt, if the points of cleanlineſs and free air have been greatly neglected, the putrid *effluvia* which the priſoners bring with them in their cloaths or otherwiſe, eſpecially where too many are brought into a crouded court together, may have fatal effects on people who are accuſtomed to breathe better air; though the poor wretches, who are in ſome meaſure habituated to the fumes of a priſon, may not always be ſenſible of any great inconvenience from them. The perſons of chief note who were in the court at this time, and died of the fever, were Sir *Samuel Pennant* lord mayor for that year, Sir *Thomas Abney* one of the juſtices of the common pleas, *Charles Clarke* eſquire one of the barons of the exchequer, and Sir *Daniel Lambert* one of the aldermen of *London*. Of leſs note, a gentleman of the bar, two or three ſtudents, one of the under ſheriffs, an officer of lord chief juſtice *Lee* who attended his lordſhip in court at that time, ſeveral of the jury on the *Middleſex* ſide, and about forty other perſons whom buſineſs or curioſity had brought thither. *Foſt.* 74.

In conformity with theſe humane ſentiments, the following regulations were eſtabliſhed by the 14 *G.* 3. *c.* 59. Whereas the malignant fever, commonly called the gaol diſtemper, is found to be owing to want of cleanlineſs and freſh air in the ſeveral gaols, the fatal conſequences whereof might be prevented, if the juſtices of the peace were duly authorized to provide ſuch accommodations in gaols, as may be neceſſary to anſwer this ſalutary purpoſe; it is therefore enacted, that the juſtices, in their ſeveral quarter ſeſſions, ſhall order the walls and ceilings of the

ſeveral

ſeveral cells and wards, both of the debtors and felons, and alſo of any other rooms uſed by the priſoners in their reſpective gaols where felons are uſually confined, to be ſcraped and whitewaſhed once in the year at leaſt; and to be regularly waſhed and kept clean, and conſtantly ſupplied with freſh air by hand ventilators or otherwiſe; and ſhall order two rooms in each gaol, one for the men, and the other for the women, to be ſet apart for the ſick priſoners, directing them to be removed into ſuch rooms as ſoon as they ſhall be ſeized with any diſorder, and kept ſeparate from thoſe who ſhall be in health; and ſhall order a warm and cold bath, or commodious bathing tubs, to be provided in each gaol, and direct the priſoners to be waſhed in ſuch warm or cold baths or bathing tubs, according to the condition in which they ſhall be at the time, before they are ſuffered to go out of the gaol upon any occaſion whatſoever. And they ſhall order this act to be printed in large and legible characters upon a board, and hung up in ſome conſpicuous part of the gaol. And they ſhall alſo appoint an experienced ſurgeon or apothecary, at a ſtated ſalary, to attend the gaol; who ſhall report to the juſtices, at each quarter ſeſſions, a ſtate of the health of the priſoners under his care. *ſ.* 1.

And they ſhall have power, in their ſaid quarter ſeſſions, to order cloaths to be provided for the priſoners, when they ſee occaſion; and to prevent the priſoners from being kept under ground, whenever they can do it conveniently; and to make ſuch other orders, from time to time, for reſtoring or preſerving the health of priſoners, as they ſhall think neceſſary; and alſo to direct the ſeveral courts of juſtice within their reſpective juriſdictions to be properly ventilated. *ſ.* 2.

And the expences attending the execution hereof, ſo far as the ſame ſhall reſpect county gaols and courts of juſtice belonging to counties, ſhall be paid out of the county rates; and ſo far as they reſpect the gaols and courts of juſtice of particular cities, franchiſes, or places, that do not contribute to the county rate, ſhall be paid out of the publick ſtock of ſuch city, franchiſe, or place. *ſ.* 3.

And if the gaoler ſhall neglect or diſobey the orders of the juſtices, he may be proceeded againſt in a ſummary way, by complaint to the judges of aſſize, or to the juſtices in their quarter ſeſſions; and if he be found guilty, he ſhall pay ſuch fine as they ſhall impoſe, and be committed

in caſe of non-payment. *id.* [It is not ſpecified to what place, nor for what time.] *

VIII. Of

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* Theſe ſalutary proviſions are owing in a great meaſure to the ſuggeſtions of a gentleman whoſe name ought to be for ever remembred with honour in the annals of this kingdom. *John Howard* eſquire, being high ſheriff of the county of *Bedford* in the year 1773, became by virtue of his office acquainted with the ſtate of the gaol, in which he found many things wanting to be reformed; and was led on from thence to inquire into the condition of other gaols, until at length, by a ſpirit of perſeverance unexampled in hiſtory, in contempt of the utmoſt danger from the gaol diſtemper and other diſcouragements, he viſited every county gaol and alſo every city and town gaol and houſe of correction in the kingdom; and after all, travelled into foreign countries, and ſurveyed the priſons in *France*, *Flanders*, *Holland*, *Germany*, and *Switzerland*. The reſult of his inquiries he publiſhed in one volume in *quarto*, in the year 1777; wherein he exhibits ſuch a complication of calamity and horror in the gaols of this kingdom, as nothing but a pen influenced by his own yearnings and ſenſibility can expreſs. He computes that many more perſons die by the gaol fever alone, than by the hands of the executioner. He affectingly deſcribes the ſallow and meagre countenances of emaciated objects, who a few months before had gone into the goal ruddy and full of health; ſome expiring on the floors in loathſome cells; others having their toes mortified, or quite rotted from their feet. Dungeons, ten, twenty, or thirty ſteps under ground, and ſome of them covered with water at the bottom; without light, and without freſh air. In many of the gaols, men and women, debtors and felons, young and old, crowded together. Little or no proviſion of cloathing; no bedding; no ſtraw, or if ſtraw, farmed by the gaoler, who changes it not for months together. Scanty allowance of maintenance, and this alſo ſometimes farmed by the gaoler: no proviſion at all in many places for debtors; and if deſirous to work for their maintenance, they are not allowed, leſt they ſhould furniſh felons with their tools in attempting to eſcape. Even in moſt of the houſes of correction, neither tools nor materials of any kind, but the priſoners ſpend their time in ſloth, profaneneſs, and debauchery, to a degree extremely ſhocking. In the gaols, drinking, and rioting, and gaming; the gaol being as it were a great inn, wherein the gaoler, though he is reſtrained from ſelling ſpirituous liquors, yet is regularly licenſed to ſell ale and beer; and inſtead of receiving a ſalary for the trouble of his office, ſometimes paying an annual rent for its emoluments.

Mr. *Howard*'s account of the foreign priſons forms a ſtriking contraſt. In many of them, regularity and order. Men and women, debtors and felons, kept ſeparate. Cleanlineſs in every depart-

VIII. Of clergymen to officiate in gaols.

The juſtices in ſeſſions may appoint clergymen to officiate in gaols according to the rites of the church of England, and allow to each a ſalary not exceeding 50 l a year; to be paid by the treaſurer out of the county rate. 13 *G.* 3. *c.* 58.

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department. The ſewers kept open. Plenty of freſh water. Priſoners not kept in irons. No gaol fever. Debtors few; in *France*, only in proportion of ſix debtors to two hundred felons; whereof one principal reaſon is, that the creditors maintain them in gaol. Felons alſo in the gaol, in proportion, not numerous; becauſe they come to their trial ſpeedily after commitment. Executions very rare; the convicts being condemned to labour, and therein regularly and conſtantly employed: In *Amſterdam*, for ſome years paſt, only about one execution in a year; and in all the ſeven united provinces, ſeldom more than four, five, or ſix.

Upon the whole; the regulations effected by the aforeſaid act of the 14 *G.* 3. and other improvements which may be ſuggeſted, though they are and may be very uſeful in their kind, yet are only palliative, and do not extend to the root of the diſorder, which lies deeper, and is to be attributed in the firſt place to the want of proper buildings. The gaols were originally in the caſtles; and what kind of priſons theſe were, ſuch of them as yet remain in the caſtles ſufficiently demonſtrate. And thoſe which have been erected in after-times, diſtinct from the caſtles, have followed the ſame contracted model, being calculated merely for ſafe cuſtody, with ſcarce any other conſideration, or any thoughts of guarding againſt the total deſtruction of priſoners. If Mr. *Howard*'s plan of building gaols, and his rules for conducting and governing them, were adopted, there is little reaſon to doubt but that priſoners would be as well taken care of in England as in other countries.

—Upon this humane plan, the ſtatute of the 19 *G.* 3. *c.* 74. hath enacted, that penitentiary houſes ſhall be erected, and ſhips or veſſels provided, for the puniſhment by hard labour (and reformation, if it may be) of perſons convicted of grand or petty larceny, or other crime, for which by the laws of this realm they are liable to be tranſported to any parts beyond the ſeas: Which is inſerted under the title *Tranſportation*.

IX. How

IX. How priſoners ſhall be delivered.

By the 3 *H.* 7. *c.* 3. Thoſe that have the cuſtody of gaols, muſt certify the names of all priſoners, to the juſtices of gaol delivery, in order to their trial or diſcharge; on pain of 5 l.

And if a gaoler detains a priſoner in gaol after his acquittal, unleſs it be for his fees (not for meat, drink, or lodging), this is an unlawful impriſonment. 2 *Inſt.* 53.

And a gaoler muſt not diſobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the priſoner over till the gaoler be paid all his fees. 2 *Haw.* 151.

But by the 14 *G.* 3. *c.* 20. If the priſoner is acquitted, or diſcharged upon proclamation for want of proſecution, or hath no bill found againſt him, he ſhall pay no fee to the gaoler for his diſcharge; but ſuch fee as hath been uſual, not exceeding 13 s 4 d, ſhall, on certificate of a judge or juſtice before whom ſuch priſoner ſhall have been diſcharged, be paid out of the general county rate.

X. Of gaolers permitting eſcapes.

If the gaoler voluntarily ſuffer a priſoner to eſcape, he ſhall be puniſhed in the ſame manner as the priſoner ought to have been who eſcaped; and if he negligently permit him to eſcape, he ſhall be puniſhed by fine and impriſonment. And the ſheriff ſhall anſwer for him. 2 *Haw.* 134, 5, 6.

But the principal gaoler is only finable for the voluntary eſcape of a felon ſuffered by his deputy; for no one ſhall ſuffer capitally for any crime, but he who is actually guilty of it. 2 *Haw.* 135.

But for a negligent eſcape ſuffered by his bailiff, the ſheriff is as much liable to anſwer, as if he had actually ſuffered it himſelf; and the court may charge either the ſheriff or bailiff for it: And if a deputy gaoler be not ſufficient to anſwer a negligent eſcape, his principal muſt anſwer for him. 2 *Haw.* 135.

XI. Concerning debtors.

Arreſting and carrying to goal.

1. By the 32 *G.* 2. *c.* 28. No ſheriff, bailiff, or other officer, ſhall carry any perſon by him arreſted or being in his

his cuſtody by virtue of any writ or other proceſs, to any tavern, alehouſe, or other publick victualling or drinking houſe, or to the private houſe of any ſuch officer or of any tenant or relation of his without his free conſent; nor charge him for any liquor, victuals, or other thing whatſoever, but what he ſhall call for of his own accord; nor cauſe or procure him to call for any ſuch, but what he ſhall call for voluntarily; nor demand, directly or indirectly, any other or greater fee than is by law allowed; nor take any gratuity for keeping him out of gaol; nor carry him to gaol within 24 hours from the time of the arreſt, unleſs ſuch perſon arreſted ſhall refuſe to be carried to ſome ſafe and convenient dwelling houſe of his own appointment within ſome city or market town (if there arreſted), otherwiſe within 3 miles from the place of arreſt, ſo as ſuch dwelling houſe be not the houſe of the perſon arreſted, and be within the reſpective diviſion or liberty. *ſ.* 1.

And no ſheriff, bailiff, or other officer, ſhall take more for one or more night's lodging, or for a day's diet, or other expences of any perſon under arreſt, than ſhall be allowed by order of ſeſſions: Which ſeſſions ſhall make order therein, and vary the ſame from time to time as they ſhall ſee occaſion; and ſhall cauſe a copy of every ſuch order, and of every variation or alteration thereof, ſigned by the clerk of the peace, to be put and kept up in ſome conſpicuous place in the ſeſſions houſe or other proper place, that the ſame may be there ſeen and examined. *ſ.* 2.

And every ſheriff, and other perſon intruſted with the execution of proceſs, ſhall deliver a printed copy of the ſeveral clauſes in this act relating to bailiffs and other perſons to be employed under them, to every ſuch bailiff and other perſon; and ſhall alſo make it part of the condition of the bond to be given by ſuch bailiff or other perſon, that he will ſhew and deliver a copy of the ſaid clauſes to every perſon he ſhall arreſt and go with to any publick or other houſe where any liquor ſhall be ſold, and that he will permit every perſon ſo arreſted or any friend of his, to read over the ſame clauſes before any liquor, meat, or victuals ſhall be called for or brought to ſuch perſon: And if any bailiff ſhall offend in the premiſſes; he ſhall, beſides the breach of the condition of the bond, be deemed guilty of a miſdemeanor in the execution of the proceſs, and puniſhable as ſuch by virtue of this act. *ſ.* 3.

Gaoler to ſuffer the priſoner to ſend for neceſſaries.

2. And the ſheriffs and gaolers ſhall ſuffer any priſoner for debt, at his will and pleaſure to ſend for or to have brought unto him at ſeaſonable times in the day, any beer, ale,

ale, victuals, or other neceſſary food, from what place he ſhall think fit, or can have the ſame; and alſo to have and uſe ſuch bedding, linen, and other neceſſaries, as he ſhall have occaſion for and think fit, or ſhall be ſupplied with, without purloining or detaining the ſame, or requiring him to pay for the having or uſing thereof, or putting any manner of reſtraint or difficulty upon him in relation thereunto. *ſ.* 4.

Juſtices to eſtabliſh tables of fees, and rules and orders for the regulation of gaols.

3. The two lords chief juſtices and lord chief baron, or two of them, together with the mayor and two aldermen of London, or with three aldermen without the mayor, in reſpect of the priſons within the ſaid city; and the ſaid lords chief juſtices and chief baron, or two of them, together with three juſtices of the peace of Middleſex and Surry reſpectively, for the priſons within the ſaid counties; and elſewhere, the juſtices in ſeſſions,—ſhall eſtabliſh tables of the rates and *fees* to be taken by gaolers within their reſpective juriſdiction, and vary the ſame from time to time as they ſhall ſee occaſion. The ſame to be ſigned reſpectively by the ſaid judges, mayor, aldermen, and juſtices within London, Middleſex, and Surry; and elſewhere, to be ſigned by 3 or more juſtices in ſeſſions, and afterwards reviewed and confirmed or moderated by the judges of aſſize (or juſtices of great ſeſſions in Wales and Cheſhire) at the next aſſizes to be held after making or varying the ſame as aforeſaid; the ſame to be afterwards ſigned by the ſaid judges of aſſize and three juſtices of the peace of ſuch diviſion or place reſpectively. *ſ.* 5.

And proper *rules and orders*, for the better government of the reſpective gaols and priſoners therein, ſhall be made, and altered from time to time as there ſhall be occaſion, by the courts of Weſtminſter hall for the ſeveral priſons belonging to the ſaid courts: And by the ſaid lords chief juſtices and chief baron or two of them, together with the mayor of London and two aldermen, or with 3 aldermen without the mayor, for the priſons within the ſaid city: And by the ſaid lords chief juſtices and chief baron or two of them, together with 3 juſtices of the peace, for the priſons within Middleſex and Surry; and elſewhere, by three or more juſtices in ſeſſions, for the priſons within their reſpective diſtricts; the ſame to be afterwards reviewed, and altered if thought neceſſary, by the judges of aſſize at the next aſſizes after making or altering the ſame: And after every making or altering as aforeſaid, the ſame ſhall be ſigned by the ſaid ſeveral perſons authorized to make, review, or alter the ſame. *ſ.* 6.

And

And duplicates of every ſuch table of fees and of orders which ſhall be made for the priſons belonging to the courts of Weſtminſter hall ſhall be inrolled in ſuch court: And for any other priſons, ſhall be tranſmitted to the clerk of the peace, to be inrolled by him, without fee; and every ſuch clerk of the peace ſhall cauſe another copy thereof to be hung up in the court where the aſſizes or quarter ſeſſions ſhall be held, there to remain and be inſpected; and ſhall cauſe another copy thereof to be tranſmitted to the gaoler; and ſuch gaoler ſhall forthwith cauſe the ſame to be hung up in ſome open place and in a conſpicuous manner in his gaol; and to be there kept up, ſo as that the priſoners may have free reſort thereto, at ſeaſonable times in the day, without paying any thing for the ſame. *id.*

And the courts of Weſtminſter hall ſhall, in every *Michaelmaſs* term, inquire whether ſuch tables of fees and ſuch rules or orders are there hung in the ſeveral priſons to them belonging, and duly complied with: And the judges of aſſize ſhall make like inquiry, and ſhall ſupply and redreſs whatever they ſhall find neglected or tranſgreſſed relating thereunto; and ſhall expreſly give in charge to the grand jury, to make inquiries thereof. *ſ.* 7, 8.

And no gaoler ſhall take, directly or indirectly, of any priſoner for debt, damages, coſts, or contempt, any other fee for his commitment, or coming into gaol, chamber rent there, releaſe or diſcharge, than ſhall be allowed in the ſaid table of fees: And every ſheriff, gaoler, or other officer, who ſhall in any wiſe offend againſt this act, ſhall for every ſuch offence (over and above ſuch other penalties or puniſhments as he ſhall be liable to by the laws now in force) forfeit to the party grieved 50 l, with treble coſts. *ſ.* 12.

Charities to gaols.

4. The courts at Weſtminſter, juſtices of aſſize (and great ſeſſions), juſtices of the peace, and commiſſioners for charitable uſes, ſhall from time to time inquire concerning gifts and bequeſts to poor priſoners; who may ſend for papers and witneſſes, and examine perſons upon oath, and order and ſettle the payment thereof in ſuch eaſy and expeditious way as they ſhall think proper. *ſ.* 9.

And a table of ſuch benefactions, after every ſuch ſettling thereof, ſhall be tranſmitted to the clerk of the peace, to be regiſtred by him without fee; and another table to the gaoler, to be hung and kept up by him in ſome conſpicuous place in his gaol, where the priſoners may have eaſy reſort thereto without fee. *ſ.* 10.

Redreſs of grievances.

5. On the petition in term time of any perſon being or having been under arreſt, complaining of any exaction

or abuſe by the gaoler or other officer, unto any of the courts of record at Weſtminſter, from whence the proceſs iſſued; or, in vacation time, to any of the judges of ſuch court, or to the judges of aſſize or great ſeſſions, or judges of any other court of record from whence ſuch proceſs iſſued; they ſhall hear and determine the ſame in a ſummary way, and make ſuch order thereupon for redreſſing the abuſes, and for puniſhing the offender, and for making reparation to the party injured, as they ſhall think juſt, together with full coſts of the complaint; the ſame to be inforced by attachment, or in any other manner as other orders of the ſaid courts or judges may be inforced. *ſ.* 11.

How priſoners may be diſcharged on delivering up their effects.

6. If any perſon ſhall be charged in execution, for any ſum not exceeding 100 l, and ſhall be minded to deliver up to his creditors who ſhall ſo charge him in execution, all his eſtate and effects towards the ſatisfaction of the debt wherewith he ſhall ſo ſtand charged; it ſhall be lawful for ſuch priſoner, before the end of the firſt term which ſhall be next after his being ſo charged in execution, to exhibit a petition to any court of law from whence the proceſs iſſued, or to the court into which he ſhall be removed by habeas corpus, or ſhall be charged in cuſtody, and ſhall remain in the priſon thereof; certifying the cauſe of his impriſonment:

And ſetting forth therein, not only a juſt and true account of all the real and perſonal eſtate which he or any perſon in truſt for him is intitled to at the time of his petitioning, and of all incumbrances and charges affecting the ſame; but alſo a juſt and true account of all the real and perſonal eſtate which he, or any perſon in truſt for him or for his uſe, was intereſted in or intitled to at the time of his impriſonment, either in poſſeſſion, remainder or expectancy, to the beſt of his belief, and ſo far as his knowledge extends; and likewiſe a juſt and true account of all ſecurities wherein any part of his eſtate conſiſteth, and of all deeds, evidences, writings, books, bonds, notes, and papers concerning the ſame or relating thereto; and the names and places of abode of the witneſſes to all ſecurities, bonds, and notes, and where they are to be met with, ſo far as his knowledge extends:

And before ſuch petition ſhall be received by any ſuch court, he ſhall cauſe to be given or left unto or for all the creditors at whoſe ſuit he ſhall ſtand charged in execution as aforeſaid, their executors or adminiſtrators, and at their uſual places of abode (or to their attorney or agent laſt employed in the cauſe, if ſuch creditors, or their executors

or

or adminiſtrators, cannot be met with, and not otherwiſe) 14 days at leaſt before ſuch petition ſhall be preſented and received, a notice in writing, ſigned with his name or mark, importing, that he doth intend to petition the court from whence the proceſs iſſued upon which he ſtands charged in execution, or into the priſon to which he ſhall have been removed by habeas corpus, or ſhall ſtand charged in execution on any judgment recovered on any bill or declaration filed or delivered in any ſuch court; and alſo ſetting forth in ſuch notice, a true copy of the account or ſchedule of his eſtate which he intends to deliver into court (except the neceſſary wearing apparel and bedding of him and his family, and the tools or inſtruments of his trade or calling, not exceeding the value of 10l in the whole):

And an affidavit of the due ſervice of ſuch notice ſhall be delivered with the petition, and openly read in the court:

And if the court ſhall be ſatisfied with the regularity of ſuch notice, the petition ſhall be received; and the court ſhall thereupon, by order or rule of the ſaid court, cauſe the priſoner ſo petitioning to be brought up, and the ſaid creditors or their executors or adminiſtrators to be ſummoned to appear perſonally or by their attorney in the ſaid court:

And on their appearance, or if they ſhall not appear, then on affidavit of the due ſervice of the ſaid order on them, or on their attorney if they cannot be met with; ſuch court ſhall in a ſummary way, examine into the matter of the petition, and tender to the priſoner the oath following;

I A. B. *do ſwear in the preſence of almighty God, that the account by me ſet forth in my petition preſented to this honourable court, doth contain a full and true account of the real and perſonal eſtate, debts, credits, and effects whatſoever, which I, or any in truſt for me, at the time of my firſt impriſonment in this action, or at any time ſince, had, or was in any reſpect intitled to, in poſſeſſion, reverſion, or remainder (except the wearing apparel and bedding of or for me and my family, and the tools or inſtruments of my trade or calling, not exceeding* 10l *in value in the whole): and alſo an account how much of my real and perſonal eſtate, debts, credits, or effects, hath ſince been diſpoſed of, releaſed or diſcharged, and how, to whom, and on what conſideration, and for what purpoſe, and how much thereof, I or any perſon or perſons in truſt for me, have, or at the time of my preſenting my ſaid petition to this honourable court,*

had, or which I am or was, or any perſon in truſt for me, or for my uſe, is any ways intereſted in, or intitled to, in poſſeſſion, reverſion, remainder, or expectancy; and alſo a true account of all deeds, writings, books, papers, ſecurities, bonds, and notes, relating thereto, and where the ſame reſpectively now are, to the beſt of my knowledge and belief, and what charges are now affecting the real eſtate I am now ſeiſed of, or intitled to [if ſuch priſoner ſhall then be ſeiſed of any real eſtate]; *and that I have not, at any time before or ſince my impriſonment, directly or indirectly, ſold, leaſed, aſſigned, mortgaged, pawned, or otherwiſe diſpoſed of, or made over in truſt for myſelf, or otherwiſe, than is mentioned in ſuch account, any part of my meſſuages, lands, tenements, eſtates, goods, ſtock, money, debts, or other real or perſonal eſtate, whereby to have or accept any benefit, advantage, or profit, to myſelf or my family, or with any view, deſign, or intent, to deceive, injure, or defraud, any of my creditors to whom I am indebted: So help me God.*

And thereupon, the court may order the meſſuages, lands, tenements, goods, and effects, contained in the account, or as much of them as ſhall be ſufficient to ſatisfy the ſaid debts and fees due to the gaoler, to be (by a ſhort indorſement on the petition, and to be ſigned by the priſoner) aſſigned and conveyed to the ſaid creditors, their heirs, executors, adminiſtrators, and aſſigns, for the benefit of them who ſhall have ſo charged ſuch priſoner in execution (ſubject nevertheleſs to all prior incumbrances affecting the ſame):

And the eſtate, intereſt, or property of all meſſuages, lands, goods, debts, eſtates, and effects which ſhall belong to ſuch priſoner, ſhall by ſuch aſſignment be veſted in the perſons to whom the aſſignment ſhall be made; and they may take poſſeſſion, and ſue for the recovery thereof, in like manner as aſſignees of commiſſioners of bankrupts:

And on ſuch aſſignment and conveyance being executed by ſuch priſoner, he ſhall be diſcharged out of cuſtody by rule or order of ſuch court; which order being produced to, and a copy thereof left with the ſheriff or gaoler, he ſhall forthwith diſcharge him, without taking any fee, or detaining him in reſpect of chamber rent, lodging, or otherwiſe:

And the perſon to whom the eſtate ſhall be aſſigned, ſhall with all convenient ſpeed ſell and diſpoſe thereof, and divide the net produce amongſt the creditors who ſhall have charged ſuch priſoner in execution before the time of preſenting the petition, in proportion to their reſpective debts.

But if any perſon at whoſe ſuit ſuch priſoner ſtood charged in execution, ſhall not be ſatisfied with ſuch priſoner's oath, and ſhall either perſonally, or by his attorney (if he cannot perſonally attend, and proof ſhall be made thereof to the ſatisfaction of ſuch court) deſire further time to inform himſelf of the matters contained therein; ſuch court may remand the priſoner, and direct him, and the perſon diſſatisfied, to appear either in perſon or by his attorney, on ſome other day at fartheſt within the firſt week of the term next following the time of ſuch examination; but ſooner if ſuch court ſhall think fit.

And all objections which ſhall be made as to the inſufficiency in point of form againſt the ſchedule, ſhall be only made the firſt time ſuch priſoner ſhall be brought up.

And if at ſuch ſecond day, the creditor diſſatisfied ſhall not appear, or ſhall be unable to diſcover any eſtate or effects of the priſoner omitted in the account ſet forth in his petition; in ſuch caſe, the court ſhall order the priſoner to be diſcharged, on his executing ſuch aſſignment and conveyance as aforeſaid; unleſs ſuch creditor ſhall inſiſt upon his being detained, and ſhall agree by writing ſigned by him (or by his attorney, in caſe ſuch creditor ſhall be out of *England*) to pay weekly a ſum not exceeding 2 s 4 d as ſuch court ſhall think fit, to the ſaid priſoner, to be paid weekly every Monday; and in ſuch caſe, the priſoner ſhall be remanded: But if any failure ſhall be made in the payment thereof, ſuch priſoner, upon application in term time to ſuch court, or in vacation time to any judge of ſuch court, may by order of ſuch court or judge be diſcharged, on his executing ſuch aſſignment as aforeſaid; proof being made on oath, of the non-payment, for any week, of ſuch ſum.

And if any priſoner ſhall refuſe to take the ſaid oath, or ſhall be detected before ſuch court or judge of falſity therein, or ſhall refuſe to execute ſuch aſſignment; he ſhall preſently be remanded. *ſ.* 13.

Provided that where more creditors than one ſhall deſire to have ſuch priſoner detained; every of ſuch creditors ſhall only reſpectively pay ſuch ſum, not exceeding 1 s 6 d a week, as the court ſhall order. *ſ.* 14.

But where any priſoner ſhall be charged in execution in any county gaol, or in any other priſon above 20 miles from Weſtminſter hall or from the court out of which the execution iſſued; then, on the like petition as aforeſaid, to the court from whence ſuch execution iſſued, or in the

priſon of which ſuch priſoner is and ſtands charged in execution; and on affidavit in like manner as aforeſaid being made and left with ſuch petition; ſuch court, on being ſatisfied with the truth of ſuch affidavit, ſhall make a rule to cauſe the priſoner to be brought to the next aſſizes (or great ſeſſions in Wales and Cheſhire) to be holden for the place where he ſhall be impriſoned; and the expence of bringing him, not exceeding 1 s a mile, ſhall be paid to the gaoler out of the priſoner's eſtate if the ſame ſhall be ſufficient to pay ſuch expence; and if not, then to be paid by the treaſurer of the county or place in which ſuch priſoner ſhall be impriſoned, as ſhall be allowed by the judge; and the creditors, or their executors or adminiſtrators, ſhall by order of the court from whence the proceſs iſſued, be ſummoned to appear at the ſaid aſſizes, if they can be met with; if not, then the attorney laſt employed for ſuch creditors; and a copy of ſuch order ſhall be ſerved on every ſuch creditor, or his executors or adminiſtrators, or left at his dwelling houſe or uſual place of abode, or with his attorney laſt employed, 14 days at leaſt before ſuch aſſizes. And upon affidavit of ſuch ſervice thereof being laid before the judge of aſſize, he ſhall, on being ſatisfied with the truth of ſuch affidavit, appoint a time for hearing the matter of the petition, on ſome certain day and time, on the crown ſide of ſuch court, during ſuch aſſizes. And on the appearance of the ſaid creditors; or, in default of their appearance, either in perſon or by attorney, then on proof of their being duly ſerved with the notice, and of a copy of the ſchedule being compriſed in ſuch notice, and of the rule of ſuch court for their appearance being duly ſerved; the judge ſhall in a ſummary way examine into the matter of the petition, and adminiſter the oath to the priſoner, and make ſuch order in the premiſſes as to him ſhall ſeem meet, and proceed in manner as aforeſaid concerning the priſoner's diſcharge, and give the ſame judgment, relief, and directions relating thereunto, as any court out of which the proceſs ſhall iſſue is herein before directed to do: And the order of the ſaid judge ſhall ſtand good, and be entred upon record in ſuch aſſizes; and a copy thereof (ſigned by the judge) ſhall be tranſmitted to the court from whence the execution iſſued, to be there alſo entred upon record. *ſ.* 15.

How compellable to deliver up.

7. By the ſaid act of 32 *G.* 2. *c.* 28. If any priſoner who ſhall be charged in execution, for any debt or damages not exceeding 100l beſides coſts of ſuit, ſhall not within three months next after his commitment make ſatisfaction

faction to his creditors who charged him in execution; any ſuch creditor or creditors may require him, on giving 20 days notice to him in writing that they deſign to compel him to give in to the court from which the proceſs iſſued, or into the court in the priſon whereof he ſhall be removed by habeas corpus, or ſhall remain or be charged in execution, within the firſt ſeven days of the term next after the expiration of the ſaid 20 days, in reſpect to any priſoner charged in any priſon belonging to the courts at Weſtminſter; and at the ſecond court which ſhall be held by any ſuch other court of record after the expiration of the ſaid 20 days, in reſpect to any priſoner charged in any priſon belonging to ſuch other court; and where ſuch priſoner ſhall be charged in execution in any county gaol or other priſon above 20 miles diſtant from Weſtminſter hall or from the court out of which the proceſs iſſued, then to give in upon oath at the aſſizes or great ſeſſions reſpectively, and on the crown ſide thereof, which ſhall be held for ſuch place next after the expiration of ſuch 20 days from the time of giving notice as aforeſaid, a true account in writing, to be ſigned by him, of all his real and perſonal eſtate, and of all incumbrances affecting the ſame, to the beſt of his knowledge and belief, in order that the eſtate and effects of ſuch priſoner may be deveſted out of him, and ordered by the court to be aſſigned and conveyed for the benefit of ſuch his creditors. And every ſuch creditor, requiring ſuch priſoner to be brought up as aforeſaid, ſhall alſo give 20 days like notice in writing of his intention to require ſuch priſoner to be brought up, to every other creditor at whoſe ſuit ſuch priſoner ſhall be detained or charged in cuſtody in ſuch gaol, if they can be found; and if not, then to the ſeveral attornies laſt employed: and ſhall alſo give a like notice in writing to the ſheriff or gaoler of ſuch his intention to have ſuch priſoner brought up, and to require ſuch ſheriff or gaoler to bring him up accordingly, 20 days at leaſt before the time appointed for him to be brought up. And thereupon ſuch ſheriff or gaoler ſhall, at the coſts of ſuch creditor, cauſe ſuch priſoner to be brought to ſuch court as by the notice is required, together with a copy of the cauſe or cauſes of his detainer: and if ſuch ſheriff or gaoler, on ſuch notice given to him as aforeſaid, and tender made to him by ſuch creditor of reaſonable charges not exceeding 1 s a mile, ſhall neglect or refuſe to bring him up as aforeſaid; he ſhall forfeit 20l to the party grieved, with treble coſts. And the priſoner ſo brought up, ſhall, on proof of ſuch notices

being given as aforeſaid, deliver in there in open court, upon oath, a full true and juſt account, diſcloſure, and diſcovery in writing, of the whole of his real and perſonal eſtate, and of all books, papers, writings, and ſecurities relating thereto, and alſo of all incumbrances then affecting the ſame, and the reſpective times when made, to the beſt of his knowledge and belief (except the neceſſary wearing apparel and bedding of him and his family, and the neceſſary tools or inſtruments of his trade or calling, not exceeding the value of 10 l in the whole): which account ſhall be ſubſcribed by him. And on delivering in of ſuch account, the eſtate and effects of ſuch priſoner ſhall be aſſigned and conveyed by him, by a ſhort indorſement on the back of the ſaid account, to ſuch perſons as the court ſhall direct, in truſt and for the benefit of the creditors who ſhall have required ſuch priſoner to be brought up, and of ſuch other creditors (if any there be) at whoſe ſuit ſuch priſoner ſhall be charged in cuſtody or in execution in any ſuch gaol, and who ſhall, by any memorandum or writing ſigned by them before ſuch aſſignment made, conſent to ſuch priſoner's being diſcharged, and to accept a proportionable dividend of ſuch priſoner's effects; and if there be no other ſuch creditor, or being ſuch, if ſuch creditor ſhall not agree in writing to diſcharge ſuch priſoner and to accept ſuch dividend, then in truſt for the creditors only who ſhall require ſuch priſoner to be brought up. And by ſuch aſſignment and conveyance, all the priſoner's eſtate and effects ſhall be veſted in the creditors to whom the ſame ſhall be aſſigned in truſt as aforeſaid. And upon ſuch diſcovery, aſſignment, and conveyance being made, the court ſhall diſcharge the priſoner in the actions and charges of every ſuch creditor, who required the priſoner to be brought up, or who ſigned ſuch conſent as aforeſaid; on paying 2 s 6 d diſcharge fee, and no more, to the officers of the court. And no ſtamp ſhall be neceſſary on ſuch aſſignment or on any rule or order for ſuch diſcharge.—But all the future effects of ſuch priſoner (except the neceſſary wearing apparel of him and his family, and the neceſſary tools or inſtruments of his trade or calling) ſhall be liable to ſatisfy his debts, if the ſame ſhall not be fully paid from his eſtate ſo aſſigned as aforeſaid; and no advantage in any ſuit ſhall be taken by him, for that the cauſe of action did not accrue within ſix years next before the commencement of ſuch ſuit, unleſs he was intitled to take ſuch advantage before he ſtood charged in cuſtody by virtue of the original ſuit or action.

—And

—And if he ſhall neglect or refuſe to deliver in and ſubſcribe ſuch account as aforeſaid, within the time herein before appointed, or within 60 days then next following, without making appear ſome juſt excuſe to be allowed of by the court; or ſhall refuſe to aſſign or convey his eſtate and effects according to the order of ſuch court; he ſhall, on conviction upon indictment, be tranſported for 7 years: And if he ſhall deliver in a falſe account; or deſignedly conceal and not inſert in the account any books, papers, ſecurities, or writings relating to his eſtate and effects, with intent to defraud his creditors, and ſhall be thereof convicted on indictment, he ſhall ſuffer as for wilful perjury. *ſ.* 16, 17.

Aſſignees may compound.

8. By the ſaid act of 32 *G.* 2. *c.* 28. The aſſignees may compound with any debtors or accountants to ſuch priſoner, and take ſuch reaſonable part of any debt due, as can upon ſuch compoſition be gotten; and alſo may ſubmit matters to arbitration, relating to the priſoner's eſtate and effects, which ſhall be binding to all the parties. *ſ.* 21.

And where mutual credit hath been given between the priſoner and any other, before the delivery of the ſchedule; the aſſignees may ſtate and allow the account between them, and receive the balance. *ſ.* 23.

Miſbehaviour in the aſſignees.

9. And it ſhall be lawful for the reſpective courts at Weſtminſter from whence the proceſs iſſued; or where the priſoner ſhall have been charged in execution by proceſs iſſued out of any other court, it ſhall be lawful for the judges of the courts of king's bench, common pleas, and exchequer, or any of them, from time to time, on the petition of any creditor who had charged ſuch priſoner in execution, or of ſuch priſoner, complaining of any inſufficiency, fraud, miſmanagement, or other miſbehaviour of any aſſignee, to order the parties to attend thereon; and upon hearing, they ſhall make ſuch order, either for the removal of ſuch aſſignee and appointing a new one, or for the juſt management of the effects, as to them ſhall ſeem meet. *ſ.* 22.

Gaoler to have only his dividend.

10. If the effects aſſigned ſhall not ſatisfy the whole debt, and the gaoler's fees; the gaoler ſhall receive only a proportionable dividend with the other creditors. *ſ.* 19.

Priſoner diſcharged ſhall not be again arreſted.

11. A priſoner diſcharged ſhall never after be arreſted or liable to action for the ſame debt, unleſs convicted of perjury. *ſ.* 20.

But his effects ſhall be liable.

12. But nevertheleſs, the judgment againſt him ſhall continue in force, and execution thereon may be had at any time againſt his lands and goods, other than his neceſſary

ceſſary wearing apparel and bedding for himſelf and family, and the neceſſary tools of his trade or occupation not exceeding 10 l value in the whole. *ſ.* 20.

Perſons guilty of perjury.

13. If any perſon who ſhall take any oath as by this act required to be taken, ſhall upon any indictment for perjury be convicted by confeſſion or verdict; he ſhall ſuffer as for wilful perjury, and ſhall alſo be liable to be taken on any proceſs de novo, and ſhall never after have the benefit of this act. *ſ.* 18.

Perſons not relievable having taken the benefit of any former act.

14. No perſon who ſhall have taken the benefit of any act for the relief of inſolvent debtors, ſhall have any benefit under this act; nor ſhall be deemed within the meaning of it, ſo as to gain any diſcharge, unleſs compelled by any creditor to deliver up his eſtate and effects. *ſ.* 24.

XII. Concerning the priſons of the king's bench *and* marſhalſea.

The juſtices in *Eaſter* ſeſſions ſhall ſet down what ſums ſhall be ſent out of every county or place corporate, for the relief of the poor priſoners of the *king's bench* and *marſhalſea*, ſo as there be ſent out of every county yearly 20 s at the leaſt to each of the ſaid priſons; to be paid by the high conſtables out of the general county rate, to two ſuch treaſurers or one of them, as by the more part of the juſtices of the county ſhall be elected to be treaſurers: which treaſurers, on the firſt day of *Trinity* term yearly, ſhall pay over the ſame to the lord chief juſtice of *England*, and knight marſhal, or to whom they ſhall appoint, taking their acquittance for the ſame, or in default of the chief juſtice, to the next moſt antient juſtice of the *king's bench*, equally to be divided between the priſoners of the *king's bench* and *marſhalſea* priſons. 43 *El. c.* 2. *ſ.* 12, 13, 14. 11 *G.* 2. *c.* 20. *ſ.* 1. 12 *G.* 2. *c.* 29.

And if the treaſurer ſhall neglect or refuſe, the king's bench may make a rule on him, requiring him to pay the ſame; and obedience to ſuch rule may be inforced as other rules of the ſaid court, at the coſts and charges of the treaſurer. 11 *G.* 2. *c.* 20. *ſ.* 2, 4.

And that the treaſurer may be the better amenable to the ſaid court, he ſhall within 30 days after his election or appointment, under the like penalty, tranſmit his name and

and place of abode to the clerk of the crown in the king's bench, to be entred by him; for which entry no fee ſhall be paid. *ſ.* 3.

Gauger. See **Exciſe.**
Gin. See **Exciſe.**

Glaſs.

BY the 13 *G.* 3. *c.* 38. for the eſtabliſhing a corporation for carrying on a glaſs manufactory, for the caſting of large plate glaſs (which act hath continuance for 21 years) many of the penalties and forfeitures are recoverable before one juſtice of the place where ſuch manufacture ſhall be carried on: Which not being general, it is thought ſufficient in this place to refer thoſe whom it may concern to the act itſelf.

For the Duties on Glaſs, ſee **Exciſe.**
Good behaviour. See **Surety.**
Grand larceny. See **Larceny.**
Greyhound. See **Game.**

Gunpowder.

1. BY an act made in the 16 *C.* 1. *c.* 21. (to wit, in 1640, being the laſt ſtatute of force in that king's reign) All ſubjects may make and ſell gunpowder, and bring into the kingdom ſalt-petre, brimſtone, or any other material for the making of it. Who may make gunpowder.

And by a ſtatute made in the firſt year of the reign of king *James* the ſecond (which is alſo ſomewhat remarkable), it is enacted, that if any perſon ſhall obtain a grant for the ſole making or importing of gunpowder, he ſhall incur a præmunire. 1 *J.* 2. *c.* 8. *ſ.* 3.

2. It ſeemeth, that erecting powder mills, or keeping powder magazines, near a town, is a nuſance by the common law; for which an indictment or information will lie. For in the caſe of *K.* and *Williams*, *E.* 12 *W.* there Erecting powder mills near a town, a nuſance.

was an indictment againſt *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K.* and *Taylor*, *T.* 15 *G.* 2. the court granted an information againſt the defendant as for a nuſance, on affidavits of his keeping great quantities of gunpowder near *Maldon* in *Surry*, to the indangering the church and houſes where he lived. *Str.* 1169. (Or rather, it ſhould have been expreſſed, to the indangering the lives of his majeſty's ſubjects.)

In what places gunpowder may be made.

3. By the 12 *G.* 3. *c.* 61. (which reduces into one, and repeals, all former acts relating to the making, keeping, and carrying of gunpowder) No perſon ſhall uſe any mill or other engine for making of gunpowder, in any place except in mills and other places where the manufacture of gunpowder ſhall be actually carrying on at the time of the commencement of this act, or where it ſhall afterwards become lawful to carry on ſuch manufacture by licence for that purpoſe as herein after directed; on pain of forfeiting all gunpowder manufactured otherwiſe, and 2 s for each pound. *ſ.* 1.

No peſtle mill ſhall be uſed in making.

4. No perſon ſhall, for the making of gunpowder, uſe any mill or engine worked with a peſtle, commonly called a *Peſtle mill*; on pain of forfeiting all gunpowder manufactured therein, and 2 s for each pound. *ſ.* 2.

What quantity ſhall be made at one time.

5. No perſon ſhall, in any mill or engine, make at any one time, under any ſingle pair of mill ſtones, any quantity of gunpowder, or materials to be made into gunpowder, exceeding 40 lb; on pain of forfeiting all above 40 lb, and alſo 2 s for each pound. *ſ.* 3.

Exception of Battle powder.

6. Provided, that nothing in this act ſhall extend to the powder mills now erected in the pariſhes of *Battle*, *Crowhurſt*, *Seddelcomb*, and *Brede*, in the county of *Suſſex*, ſo far as relates to the making ſuch fine fowling gunpowder only, as is known by the name of *Battle powder*. ſ. 5.

What quantity ſhall be dried at one time.

7. No perſon ſhall dry at any one time, in any one ſtove or place uſed for the drying of gunpowder, any quantity exceeding 40 hundred weight; on pain of forfeiting all above the ſaid weight, and 2 s for each pound. *ſ.* 6.

What quantity ſhall be kept in or near the place of making.

8. No perſon ſhall keep in any corning houſe, drying houſe, duſting houſe, or other place uſed in making of gunpowder, or in any building adjoining or belonging thereto (except magazines or ſtorehouſes conſtructed with ſtone or brick, and ſituate 50 yards at leaſt from the gunpowder mill) any greater quantity of gunpowder, than ſhall be neceſſary for the immediate work then carrying on in ſuch houſe or other place; on pain of forfeiting all the

the gunpowder above ſuch neceſſary quantity, and 2 s for each pound. *ſ.* 7.

9. Every perſon and perſons, uſing any mill or other engine for making of gunpowder, ſhall, beſides the magazines and ſtorehouſes near their mills, have a good and ſufficient magazine remote from their reſpective mills, for the purpoſe of receiving and ſafe keeping all the gunpowder made at ſuch mills, as ſoon as the ſame can from time to time be conveniently removed thereto (which laſt-mentioned magazine ſhall be built with brick or ſtone near the river *Thames* and below *Blackwall*, or in ſome other convenient place to be licenſed by the juſtices as herein after mentioned); on pain that every perſon making gunpowder, without having ſuch magazine remote from the mill or other place of making, ſhall forfeit 25 l for every month during which he ſhall make gunpowder without having ſuch magazine, and 5 l for every day during which he (not being hindred by ſtreſs of weather or other juſt impediment) ſhall wilfully neglect or delay removing, with due diligence, the gunpowder made at ſuch mill, from thence, or from the magazine or ſtorehouſe adjoining thereto, to the magazine ſo to be ſituate remote from the mill. *ſ.* 8. Magazines to be kept remote from the mill.

10. Every maker of gunpowder, who ſhall keep any charcoal within 20 yards of any mill or other engine for making gunpowder, or of any drying, corning, or duſting houſe, or magazine or ſtorehouſe thereto belonging, ſhall forfeit 5 l for every week during which ſuch charcoal ſhall be ſo kept. *ſ.* 10. Charcoal not to be kept near the mill.

11. No perſon, being a dealer in gunpowder, ſhall keep at any one time more than 200 lb of gunpowder, and, not being a dealer, more than 50 lb, in any houſe, mill, magazine, ſtorehouſe, warehouſe, ſhop, cellar, yard, wharf, or other building or place occupied by him, or on any river or other water, (except in carriages loading or unloading, or paſſing on the land; or in ſhips, boats, or veſſels loading or unloading, or paſſing on any river or other water, or detained there by the tide or bad weather,) within the following limits; that is to ſay, Within the cities of London or Weſtminſter or within 3 miles of either of them; or within any other city, borough, or market town, or one mile thereof; or within two miles of any of the king's palaces, or any of the king's magazines; or half a mile of any pariſh church; or in any other part of Great Britain, except in mills or other places which at the commencement of this act ſhall be uſed for the making of gunpowder, and in the places where it ſhall be lawful Within what limits gunpowder may be kept.

to

to make gunpowder, or to keep greater or unlimited quantities of gunpowder by force of the proviſions herein after contained; on pain of forfeiting all the gunpowder beyond the quantity hereby allowed to be kept, and the barrels in which ſuch gunpowder ſhall be, and alſo 2 s for every pound beyond ſuch allowed quantity. *ſ.* 11.

Provided, that it ſhall be lawful for any perſon to keep, for the uſe of any mine or colliery, any quantity of gunpowder, not exceeding 300 pounds weight, in any magazine or warehouſe, ſo as the ſame be within 200 yards of ſuch mine or colliery, and not within any of the limits herein before particularly deſcribed. *ſ.* 12.

The ſeſſions to licenſe the erecting of mills or magazines.

12. And whereas it may be neceſſary to have ſome places appointed, in which it may be lawful to erect new mills or other engines for making gunpowder, with proper magazines and offices adjoining thereto, and to have magazines for keeping unlimited quantities of gunpowder in places where there are no mills; it ſhall therefore be lawful for the juſtices in ſeſſions, from time to time, to licenſe the erecting or having ſuch mills and offices, or ſuch magazines for keeping unlimited quantities of gunpowder in places, not being within London or Weſtminſter or any other limits herein before particularly deſcribed, the perſon applying having firſt given 14 days notice in writing of the intention to make ſuch application, as alſo of the place or places propoſed for ſuch purpoſes reſpectively, to an overſeer of the poor or churchwarden of the pariſh or place wherein it is propoſed to erect ſuch new mill and offices or magazine, or of an adjoining pariſh if the place be extraparochial; which overſeer or churchwarden ſhall cauſe ſuch notice to be publickly read on the Sunday next enſuing in the pariſh church after divine ſervice. *ſ.* 13.

And if the juſtices in the ſaid ſeſſions ſhall refuſe to grant ſuch licence, the party aggrieved may apply to the ſaid juſtices then preſent for a ſpecial ſtate of the caſe, together with the proofs offered for and againſt the application, in order that the ſaid caſe and proceedings may be removed by certiorari into the court of king's bench; and the juſtices, in their return to the certiorari ſhall ſtate ſuch ſpecial caſe. And if the court of king's bench ſhall be of opinion, that the juſtices ought not to have refuſed ſuch licence, they ſhall order the juſtices to grant ſuch licence at their next ſeſſions, and ſhall award coſts on the writ of certiorari as they ſhall think fit. *ſ.* 14.

Provided nevertheleſs, that no perſon ſhall be liable to any penalty or proſecution under this act, for keeping unlimited

unlimited quantities of gunpowder without ſuch licence of the juſtices, in any magazine remote from any gunpowder mill, and already built and uſed for that purpoſe, in any place not being within London or Weſtminſter or the other limits herein before deſcribed, until the expiration of ſix kalendar months, after an adjudication by the juſtices that the ſame is dangerous: And they ſhall not have power to make ſuch adjudication, except on complaint to them by ſome houſeholder of the pariſh or place in which the magazine ſhall be, and after ſummons of the owner and examination of witneſſes. *ſ.* 15.

And whereas the makers of gunpowder will be liable to penalties for not having magazines remote from their mills, and in ſome caſes they may not be able to agree for the purchaſe of ground proper for the ſame; the juſtices in ſeſſions, on application by ſuch maker of gunpowder, may appoint proper and convenient pieces of ground, not being in London or Weſtminſter or other the limits aforeſaid, and not exceeding one acre in any one place, with the uſe of convenient roads thereto, on which they may erect magazines, after having agreed with the owner for the purchaſe of the ſame: And if ſuch owner ſhall not agree, or by reaſon of any impediment cannot agree, the juſtices ſhall iſſue a warrant to the ſheriff, to ſummon a jury to appear before them at a time and place appointed, who ſhall upon their oaths inquire into the true value of the ſaid pieces of ground, with the uſe of ſuch convenient roads thereto. And the juſtices may ſend for any perſons intereſted, and examine any parties or witneſſes upon oath. And the verdict of the jury ſhall be kept amongſt the records of the ſeſſions. And the judgment of the ſaid juſtices thereon ſhall be final. And the ſum of money ſo to be adjudged, not exceeding 30 years purchaſe, ſhall be paid to the owner of the ground; and upon ſuch payment, or in caſe of refuſal to accept the money, then upon leaving the ſame with the juſtices for the benefit of the owner, the inheritance of the ground, and the uſe of the ſaid roads thereto, ſhall be veſted in the purchaſer, his heirs and aſſigns, for the purpoſe aforeſaid, and not otherwiſe. *ſ.* 16.

What quantities ſhall be carried at one time.

13. No perſon ſhall carry at any one time more than 25 barrels of gunpowder in any waggon, cart, or other carriage by land; or more than 200 barrels in any barge, boat, or other veſſel by water (except in veſſels with gunpowder imported from or to be exported to any place beyond the ſea, or going coaſtwiſe): And the barrels in which it ſhall be carried ſhall be cloſe joined and hooped, without

without any iron about them, and ſo ſecured that no part of the gunpowder be ſcattered in the paſſage: And each barrel ſhall contain no more than one hundred pounds of gunpowder: And when conveyed by land, ſhall be intirely incloſed in a leathern bag, or a bag commonly called a ſalt petre bag: And every carriage in which gunpowder ſhall be conveyed by land, ſhall have a compleat covering of wood, painted cloth, tarpaulin, or wadmill tilts, over all the gunpowder therein contained: And alſo no gunpowder ſhall be conveyed in any barge, boat, or other veſſel by water (except in veſſels for importation, or exportation, or going coaſtwiſe, as aforeſaid) that hath not a cloſe deck; and as ſoon as any gunpowder is put on board ſuch veſſel, all ſuch gunpowder ſhall be covered with raw hides or tarpaulins.—And all gunpowder carried in greater quantity, or in other manner than is herein before preſcribed, and the barrels in which ſuch gunpowder ſhall be, may be ſeized by any perſon; who ſhall have the ſame authority to remove ſuch gunpowder and barrels, and for that purpoſe to uſe, during the ſpace of 24 hours after ſeizure, the carriage or veſſel in which ſuch gunpowder ſhall be ſeized, and the tackling, beaſts, and accoutrements belonging thereto, on paying a recompence for the uſe thereof, as is herein after given to perſons ſearching under a juſtice's warrant: And ſuch ſeizure ſhall be for his own uſe, on conviction of the offender. *ſ.* 18.

And when any barge, boat, or veſſel, having ſtale, condemned, or returned gunpowder on board, arrives at the wharf, key, or other place where the ſame is intended to be landed; no perſon ſhall begin to unload, or ſhall bring down to ſuch wharf, key, or other place, with intent to load in ſuch veſſel, any other gunpowder, until the whole or part of ſuch ſtale, condemned, or returned gunpowder, be firſt unloaded and carried away from ſuch wharf, key, or other place of landing: And after ſuch unloading and carrying away of part of ſuch gunpowder, no perſon ſhall begin to load, or ſhall ſo bring down with intent to load, any greater quantity of other gunpowder than the part unloaded and carried away; on pain of forfeiting all ſuch gunpowder as ſhall be ſo brought down or loaded contrary hereunto. *ſ.* 19.

Combuſtibles not to be kept on ſhipboard.

14. If any perſon, having the care or management of any barge, boat, or other veſſel (except ſhips for importation, exportation, or going coaſtwiſe, as aforeſaid) loaded with gunpowder, or any other perſon on board the ſame, ſhall bring, have, or uſe any charcoal or other com-

combuſtible matter, or any fire or lighted candle, or ſhall ſmoak, or wittingly permit any perſon to ſmoak on board the ſame; he ſhall forfeit 5 l. ſ. 20.

Gunpowder in carrying not to be delayed.

15. If any perſon having the care of any waggon, cart, or other carriage, uſed for the conveyance of gunpowder by land, ſhall, after beginning to load therein any quantity of gunpowder, or beginning to unload the ſame thereout, ſtop or ſtay at any place of loading, or in the loading or unloading ſuffer any longer time to paſs than ſhall be reaſonably neceſſary for that purpoſe; or if any perſon having the care of any barge, boat, or other veſſel uſed for the conveyance of gunpowder by water (except in the caſe of importation, exportation, or carrying coaſtwiſe, as aforeſaid) ſhall, after beginning to load or unload any quantity of gunpowder, ſtop or ſtay at any wharf, key, or other place of loading, or in the loading or unloading thereof ſuffer any longer time to paſs than ſhall be reaſonably neceſſary for that purpoſe, not exceeding 18 hours, unleſs hindred by the weather; or if any perſon ſhall take in or carry in ſuch carriage or veſſel any other lading of any kind; he ſhall forfeit 10 l. ſ. 21.

Provided, that none of the aforeſaid proviſions concerning the conveying, loading, or unloading, ſhall extend to any other carriage or veſſel, than ſuch as ſhall carry a quantity of gunpowder exceeding 100 pounds weight. ſ. 22.

Power of the juſtices to ſearch.

16. And for the more eaſy diſcovery of offenders, any juſtice, on demand made, and reaſonable cauſe aſſigned upon oath, may iſſue his warrant for ſearching, in the day time, any houſe, mill, magazine, ſtorehouſe, warehouſe, ſhop, cellar, yard, wharf, or other place, or any carriage, ſhip, boat, or veſſel, in which ſuch gunpowder is ſuſpected to be made, kept, or carried, contrary to this act: And all gunpowder found on ſuch ſearch, and alſo the barrels, ſhall be immediately ſeized by the ſearcher, who ſhall with all convenient ſpeed remove the ſame to ſuch proper place as he ſhall think fit; and in caſe of gunpowder ſeized in any carriage or veſſel, may uſe for the purpoſe of removal, during the ſpace of 24 hours after ſeizure, ſuch carriage or veſſel, with the tackling, beaſts, and accoutrements belonging thereto (paying afterwards to the owner a ſufficient recompence for the uſe thereof, to be ſettled by the juſtices before whom the cauſe ſhall be heard), and may detain ſuch gunpowder and barrels, till it ſhall be adjudged on a hearing before two juſtices whether the ſame ſhall be forfeited. ſ. 23.

Regulations on the river Thames.

17. For ſecurity of ſhips in the river Thames, no maſter of any veſſel outward bound ſhall receive on board more than 25lb of gunpowder (except for the king's ſervice) before the arrival of ſuch veſſel at or below Blackwall; and the maſter of every veſſel coming into the river Thames ſhall (except in caſe of the king's ſervice) put on ſhore in proper places all the gunpowder on board above 25 pounds, either before the arrival of ſuch veſſel at Blackwall, or within 24 hours (if the weather will permit), and ſhall not afterwards have on board more than 25 pounds (except for the king's ſervice); on pain of forfeiting all the gunpowder found on board above 25 pounds, and the barrels containing the ſame, and alſo 2s for every pound above the quantity of 25 pounds. *ſ.* 24.

And the maſter, wardens, and aſſiſtants of the corporation of Trinity houſe of Deptford Strond ſhall appoint ſearchers, who may, between ſun-riſing and ſun-ſetting, enter any ſhip or veſſel (except his majeſty's ſhips) in the Thames above Blackwall, and ſearch for unlawful quantities of gunpowder; and ſhall have the ſame powers of ſeizing, removing to proper places, and detaining all ſuch gunpowder and barrels, as are herein before given to perſons ſearching by a juſtice's warrant. *ſ.* 25.

Penalties how to be recovered.

18. All penalties on this act ſhall be recovered before two juſtices, on conviction of the offender by confeſſion or oath of one witneſs, and be diſtributed half to the king and half to the informer; and where the penalty is pecuniary, it ſhall be levied by diſtreſs, and for want of ſufficient diſtreſs, the offender ſhall be committed to the houſe of correction, to be kept to hard labour, not exceeding 6 months, nor leſs than three. *ſ.* 26.

Proſecution to be commenced within 14 days after ſeizure of the gunpowder, or commiſſion of the offence where there ſhall not be any ſeizure. *ſ.* 27.

General exception.

19. Provided, that this act ſhall not extend to any mills or other buildings erected for making gunpowder in any lands belonging to his majeſty; or to the keeping of gunpowder at any of his majeſty's ſtorehouſes or magazines; or to hinder the trial of gunpowder by his majeſty's officers; or to the keeping of gunpowder at the magazines now erected at *Barking Creekſmouth* in the county of *Eſſex*, *Eryth Level* in the county of *Kent*, or the magazines near *Liverpoole*, or the city of *Briſtol*; or to the carriage of gunpowder to or from the king's magazines, under a ſpecial order from the board of ordnance; or to the carriage of gunpowder with forces on their march, or with

with the militia during their annual exercise, or which shall be sent for the use of such forces or militia. *s.* 29.

Also, this act shall not extend to hinder any person from carrying an unlimited quantity of gunpowder, in such close decked vessels and in such manner as is herein before directed, from any vessels lying below Blackwall, or from such magazines lying below Blackwall and going to any place beyond sea or coastwise. *s.* 30.

Guns. See **Game.**

Habeas Corpus. See **Bail.**

Hackney coaches and chairs.

For the duty on coaches, see title **Excise.**

Commissioners. 1. THE king may appoint persons not exceeding five, to be commissioners for regulating hackney coaches within the bills of mortality. 9 *An. c.* 23. *s.* 1.

Licensing. 2. Which commissioners shall under hand and seal license hackney coaches within the cities of London and Westminster and suburbs thereof, and other places within the bills of mortality, not exceeding 1000; and on every licence shall be reserved 5s a week, to be paid monthly. 9 *An. c.* 23. *s.* 2. 11 *G.* 3. *c.* 24, 28.

And they shall also license hackney chairs within the said liberties, not exceeding 400; reserving a rent of 10s a year, to be paid quarterly. 9 *An. c.* 23. *s.* 3. 10 *An. c.* 19. *s.* 158. 12 *G. c.* 12. *s.* 15.

Mark. 3. Every coach and chair shall have a distinct mark on each side; and if any shall alter such mark, he shall forfeit 5l, half to the informer, and half to the king. 9 *An. c.* 23. *s.* 4.

Size of the horses 4. No horse to be used with any hackney coach, shall be under 14 hands high. 9 *An. c.* 23. *s.* 4.

Penalty of driving without licence. 5. No person shall drive or let to hire any hackney coach without licence; on pain of 5l: nor shall carry any person for hire in a hackney chair, without licence; on pain of 40s in like manner. 9 *An. c.* 23. *s.* 4.

And by the 1 *G. st.* 2. *c.* 57. No unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the liberties aforesaid, on pain of 5l as for driving unlicensed. *s.* 3.

And if any perſon ſhall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the maſter or ſome of his family; on information given to the commiſſioners, they may ſummon the driver, and unleſs he prove an order from the maſter to attend at the funeral, the driver or the undertaker ſhall forfeit 5 l. *ſ.* 4.

Limitation of diſtance.

6. Every licenſed coachman, plying for hire, within the cities of *London* and *Weſtminſter* or the ſuburbs thereof, or elſewhere within the bills of mortality, ſhall be obliged and compellable, on every day of the week, at ſeaſonable times, to go any where within the diſtance of ten miles from either of the ſaid cities. 7 *G.* 3. *c.* 44. *ſ.* 12. 12 *G.* 3. *c.* 49 *ſ.* 1.

But no perſon, who ſhall regularly uſe ſuch hackney coach as a *ſtage coach* to and from any of the towns or places in the neighbourhood of *London* or *Weſtminſter*, ſhall be obliged to carry any fare out of the ordinary courſe of his ſtage work or duty; provided that he do by painting, in legible characters, on the door of ſuch coach or on a board to be affixed on ſuch door, plainly denote and diſtinguiſh the ſame to be a ſtage coach to and from any ſuch town or place. 12 *G.* 3. *c.* 49. *ſ.* 2.

Drivers to have check ſtrings.

7. And the commiſſioners ſhall order the ſeveral perſons who take out licences for hackney coaches, that they provide cheque ſtrings or wire, to be placed in ſuch convenient part of every ſuch coach as to the ſaid commiſſioners ſhall ſeem meet: and every hackney coachman plying for hire without ſuch cheque ſtring or wire ſhall forfeit 5 s, to be recovered as other penalties by any law relating to hackney coaches. 11 *G.* 3. *c.* 28.

Rates.

8. And the coachman ſhall not take above the rate of 12 s 6 d a day, 7 *G.* 3. *c.* 44. *ſ.* 17. reckoning 12 hours to the day; and by the hour, not above 18 d for the firſt hour; and 12 d for every hour after: And no perſon ſhall pay from any of the inns of court or thereabouts to any part of St. *James*'s or the city of *Weſtminſter* (except beyond *Tuttle-ſtreet*) above 12 d, and the ſame prices from the ſame places to the inns of court or thereabouts; and from the inns of court or thereabouts, to the *Royal Exchange* 12 d, and if to the *Tower* or *Biſhopgate-ſtreet* or *Aldgate* or thereabouts 18 d, and ſo from the ſaid places to the ſaid inns of court as aforeſaid: and the like rates from and to any place, at the like diſtance, within the places before mentioned. 9 *An.* *c.* 23. *ſ.* 6.

And no perſon ſhall be obliged to pay above 12 d for a coach for any diſtance (not above ſpecified) not exceeding one

one mile and four furlongs; nor above 1 s 6 d for any diſtance above a mile and four furlongs, and not exceeding two miles. *ſ.* 7.

And a chairman may take for any diſtance not exceeding one mile, 12 d; for any diſtance above one mile and not exceeding one mile and four furlongs, 1 s 6 d; for every further diſtance not exceeding four furlongs 6 d; and by the hour, 18 d for the firſt hour, and 6 d for every half hour after. 7 *G.* 3. *c.* 44. *ſ.* 13.

9. And the commiſſioners may make by-laws, to bind all perſons licenſed, and the renters of ſuch licences, and the drivers. 9 *An. c* 23. *ſ.* 16. 1 *G. ſt.* 2. *c.* 57. *ſ.* 1. By-laws.

The ſame to be approved by the lord chancellor, commiſſioners of the great ſeal, two chief juſtices, and chief baron, or three of them. 9 *An. c.* 23. *ſ.* 17.

10. And if any hackney coachman ſhall refuſe to go at, or exact more for his hire, than according to the above act, or by-laws; he ſhall forfeit a ſum not exceeding 3 l, nor under 10 s. 1 *G. ſt.* 2. *c.* 57. *ſ.* 2. Driver exacting.

11. And if any perſon who ſhall drive a coach, or carry a chair for hire, acting under a perſon licenſed, ſhall be guilty of miſbehaviour, by demanding more than his fare, or giving abuſive language, or other rude behaviour; he ſhall, on conviction on oath, forfeit not exceeding 20 s, to the poor; and if he ſhall not be able, or refuſe to pay, he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour for ſeven days, and receive the publick correction of the houſe before he be diſcharged. 9 *An. c.* 23. *ſ.* 44. Miſbehaving.

And on miſbehaviour of a coachman or chairman by abuſive language, or otherwiſe, the commiſſioners may revoke his licence, or inflict on him a penalty, not exceeding 3 l, to the poor; and on non-payment, he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour for 30 days. 9 *An. c.* 23. *ſ.* 49. 7 *G.* 3. *c.* 44. *ſ.* 16.

And in every caſe where any perſon for any offence mentioned in any law relating to the licenſing and regulating of hackney coaches and chairs, ſhall be liable to be committed to priſon; it ſhall be lawful for the commiſſioners, or any three or more of them, either to commit ſuch offender to priſon as by any former act, and for any time not exceeding one month, or to commit ſuch offender to Bridewell or other houſe of correction, there to be kept to hard labour for any time not exceeding one month, and alſo to receive the correction of the houſe. 7 *G.* 3. *c.* 44. *ſ.* 15.

And in all cases where they may commit offenders to Bridewell or other house of correction as aforesaid, they may commit them immediately upon such offenders being convicted before them. 10 *G.* 3. *c.* 44. *s.* 5.

Persons refusing to pay.

12. And if any person shall refuse to pay, or shall deface any coach or chair, any justice may grant his warrant to bring him before him; and on proof upon oath may award satisfaction to the party, and on refusal to pay, may bind him over to the next sessions, who may determine the same. 9 *An.* *c.* 23. *s.* 22.

Power of the justices.

13. The rents and penalties to be levied by distress, by warrant of three commissioners; which distress shall be sold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted (if on seven days notice they pay not the fine without such warrant); and in default of distress, to be imprisoned till paid; and if any rent shall be unpaid for 14 days, the commissioners may withdraw the licence. 9 *An.* *c.* 23. *s.* 12.

And moreover, the breach of the by-laws, and of these rules and orders, may be punished by any justice of the peace, mayor, bailiff, or other magistrate, where the offence shall be committed, in like manner as by the commissioners. 9 *An.* *c.* 23. *s.* 17. 1 *G. st.* 2. *c.* 57. *s.* 7. 4 *G.* 3. *c.* 36. 7 *G.* 3. *c.* 44. *s.* 19. 10 *G.* 3. *c.* 44. *s.* 7.

And every licensed person who shall neglect or refuse (being duly summoned for that purpose) to appear by himself or his renter, shall forfeit 10 *s*, to be recovered as the other penalties; and if such licensed person shall neglect or refuse to appear, together with his renter, upon the third summons, the complaint may be heard and determined in his absence. 10 *G.* 3. *c.* 44. *s.* 6.

And all penalties levied by any justice, mayor, bailiff, or other magistrate, shall by them be transmitted to the receiver general of the duties on hackney coaches and chairs, and they shall also transmit a certificate thereof to the commissioners, within ten days after levying such penalty; on pain of 10 *l*, half to the king, and half to him that shall sue. *s.* 8.

Note; the clause in the act of the 12 *G.* *c.* 12, abovementioned, was only to continue for 18 years; but by the 16 *G.* 2. *c.* 26. it was continued to *June* 24, 1760, *&c.* and by the 33 *G.* 2. *c.* 25, is further continued during such time as any former act relating to the licensing of hackney coaches or chairs, or any part thereof, shall be in force.

Which

Which acts, as to the time of their continuance, ſeem to ſtand thus: The 9 *An.* *c.* 23, ſo far as it relates to this ſubject, was made to continue for 32 years; and the 10 *An.* *c.* 19, ſo far as it relates to this ſubject, was made to continue for 31 years; the 1 *G.* *ſt.* 2. *c.* 57, which explains and amends the 9 *An.* *c.* 23, doth conſequently attend the fate of the ſame act of the 9 *An.* Now the 3 *G.* *c.* 7. *ſ.* 1, made the ſaid duties perpetual (ſubject to redemption by parliament), and perpetuates in like manner all the clauſes in the ſaid acts for the recovery of the ſaid duties. The 16 *G.* 2. *c.* 26, (by miſtake, as it ſeemeth) recites the ſaid acts as temporary only, and continues them along with the ſaid act of the 12 *G.* to *June* 24, 1760, *&c.* And the 33 *G.* 2. *c.* 25, reciting the duties as perpetual (ſubject to redemption by parliament as aforeſaid) ſeemeth to ſuppoſe, that nevertheleſs the clauſes in the ſaid acts for the recovery of the ſaid duties are only temporary and near expiring; and therefore enacteth, that the ſeveral clauſes in the ſaid acts relating to the power of the commiſſioners and juſtices for the recovery of the ſaid duties, ſhall be in force during ſuch time, as any other part of the ſaid acts relating to the licenſing of hackney coaches or chairs ſhall be in force (that is, as it ſeemeth, until the ſaid duties ſhall be redeemed by parliament).

Harbour filling up. See **Rivers and Navigation.**

Hares. See **Game.**

Harepipes. See **Game.**

Hawkers and pedlars.

1. THERE ſhall be paid by every hawker, pedlar, petty chapman, or any other trading perſon, going from town to town, or to other mens houſes, and travelling either on foot, or with horſe, horſes, or otherwiſe, within the kingdom of *England* (except as herein after excepted), carrying to ſell, or expoſing to ſale any goods, wares, or merchandizes, a duty of 4 l for each year. And every perſon ſo travelling with a horſe, aſs, mule, or other beaſt bearing or drawing burden, ſhall pay 4 l for each year he ſhall ſo travel with, over and above the ſaid firſt mentioned duty of 4 l. 9 & 10 *W.* *c.* 27. *ſ.* 1. Licence duty.

Trading perſon going from town to town] *T.* 31 *G.* 2. *Rex* v. *Little.* The conviction, being removed by certiorari, did ſet forth, that one *Thomas Preſton*, gentleman, came before the juſtice, and informed him, that the defendant *Thomas Little*, in the pariſh of St. *Mary*, in the city and county of the city of *Litchfield*, was found offering to ſale ſilk handkerchiefs, and trading as an hawker, pedlar, or petty chapman; and that the ſaid *Thomas Little* did not, altho' required ſo to do, produce any licence as the law in that caſe directs: That the ſaid *Thomas Little*, being brought before the juſtice doth confeſs, that he the ſaid *Thomas Little* did offer to ſell ſilk handkerchiefs to the ſaid *Thomas Preſton*, in ſuch manner as is mentioned in the aforeſaid information; and that he had no licence for ſelling thereof: Whereupon the juſtice doth adjudge, that the ſaid *Thomas Little* is an hawker within the true intent and meaning of the ſtatute in that caſe made, and is guilty of the offence in the ſaid information laid to his charge.——It was moved to quaſh this conviction, upon two exceptions, 1. With reſpect to the perſon; that he is not brought within the deſcription of the acts, as going from town to town, and travelling on foot, or with horſe, horſes, or otherwiſe: but he is only generally deſcribed to be a perſon that traded as an hawker and pedlar, and offered to ſell a parcel of ſilk handkerchiefs to the informer. 2. With reſpect to the offence; the evidence is the defendant's own confeſſion; and the confeſſion extends no farther than barely to the ſimple fact of offering to ſale ſilk handkerchiefs in ſuch manner as is charged upon him.——By lord *Mansfield* Ch. J. A ſingle act of ſelling a parcel of ſilk handkerchiefs to a particular perſon, is not a proof that he was ſuch a hawker, pedlar, or petty chapman, as ought to take out a licence, by virtue of the acts of parliament. It is certainly of the eſſence of the crime of not producing a licence, that he muſt be ſuch a perſon as ought to take out a licence. And the confeſſion is only of the fact, that he offered to ſell the handkerchiefs to *Thomas Preſton*; not that he traded as an hawker. Convictions ought to be taken ſtrictly; and it is reaſonable that they ſhould be ſo, becauſe they muſt be taken to be true againſt the defendant. I do not ſay, that it neceſſary to define exactly, what a hawker, pedlar, or petty chapman is. But it is neceſſary to alledge and ſhew that he ſold the goods, or traded as one.—— Mr. juſtice *Deniſon* concurred, for the ſame reaſons; and thought the material averment to be here wanting; it not being averred that he was ſuch a hawker, pedlar, or petty chap-

chapman, as ought to take out a licence. ——— By Mr. juſtice *Wilmot* (Mr. juſtice *Foſter* being abſent): I am clearly of the ſame opinion. For certainly a man may ſell goods as a hawker, pedlar, or petty chapman, without being ſuch a perſon as is obliged to take out a licence. And if he is not obliged to take out a licence, moſt undoubtedly he ought not to be convicted in a penalty for not producing one. Now here, it appears to me, that the juſtice hath convicted the man of an offence, of which he hath not proved him to be guilty. And by the court unanimouſly, the conviction was quaſhed. *Burrow: Mansfield.* 609.

T. 13 *G.* 3. *Hunter* and *Coulthard*. *William Hunter*, of *Dumfries* in *Scotland*, kept a ſhop there, and ſold all ſorts of linen and woollen drapery goods; and once a year, for ſeveral years together, came to *Carliſle*, and brought to a public houſe there large quantities of the like goods, and publiſhed an advertiſement through the city that the goods would be there ſold; which goods he continued ſelling by retail for a week or ten days, as cuſtomers came in, and then returned to *Dumfries*. Mr. *Coulthard* the mayor convicted him as an hawker and pedlar, for ſelling the ſaid goods without licence. *Hunter* brought an information againſt the mayor, ſetting forth in the uſual form, that the mayor *wickedly, maliciouſly, unlawfully, and under colour and in proſtitution of his office* did convict him the ſaid *Hunter* as aforeſaid. On trial of the information at *Carliſle* aſſizes in 1773, the judge and jury ſeemed to be of opinion that *Hunter* was not a hawker and pedlar within the act, going from town to town or to other mens houſes within the kingdom of England, and conſequently ought not to have been convicted, but yet that there was no criminality in the mayor, but only an error in judgment, for which a court will be very tender in puniſhing a magiſtrate criminally, but will ordinarily leave the proſecutor to his action at law for damages. But the jury having brought in a ſort of contradictory verdict, finding that *Hunter* was not a hawker and pedlar, and that the mayor was not guilty, the judge ſent them back to find the mayor peremptorily either guilty or not guilty upon the information. Upon which they found him guilty. But it appearing afterwards that they had caſt lots for their verdict, and conſequently that it would be ſet aſide upon motion; the proſecutor, to prevent further litigation, accepted a reaſonable ſatisfaction from the mayor; and ſo the matter reſted.

Expoſing

Expoſing to ſale any goods, wares, or merchandizes] But by the 9 *G.* 2. *c.* 35, he ſhall not, by virtue of ſuch licence, ſell or offer to ſale any *tea* or *ſpirituous liquors* (altho' he have a permit with the ſame); but the perſon to whom the ſame ſhall be offered may ſeize and carry the ſame to the next warehouſe, and may ſeize the offender and carry him before a juſtice, to be by him impriſoned and proſecuted for the penalties incurred for ſelling or offering the ſame to ſale without licence. *ſ.* 20.

And by the 7 *G.* 3. *c.* 43, if any *foreign cambrick* or *French lawn* ſhall be found in the poſſeſſion of any hawker, pedlar, or petty chapman; he ſhall forfeit the ſame, and alſo all the other goods in his pack, and ſhall alſo be adjudged to have forfeited his licence: half the ſaid goods to be diſpoſed to the uſe of the king, and half to the officer who ſhall ſue for the ſame; and if no officer ſhall ſue within one month, then any other perſon may ſue.

For each year he ſhall ſo travel with] The ſenſe is here manifeſtly imperfect. The intention of the act undoubtedly was to expreſs, that over and above the firſt duty of 4 l, a further duty of 4 l ſhould be paid for *every horſe, aſs, mule, or other beaſt:* Otherwiſe a man may carry in a waggon as many goods as would furniſh a large ſhop, for the ſame duty as he may carry one horſe load. And ſo he may, as the act now ſtands. Thus in the caſe of *K.* and *Robotham*, *H.* 3 *G.* 3. On a conviction upon this act being removed into the king's bench by certiorari, exception was taken, that the conviction was, for not having a licence to produce for *each horſe* he traveiled with, although it appeared that he had a regular licence to travel with *an horſe*; which licence juſtified his travelling with *one or more:* For the words of the act are, that he ſhall pay the ſaid additional duty *for each year he ſhall ſo travel with*, and not *for each horſe* or other beaſt of burden. And the conviction was quaſhed. *Burrow, Manſfield*, 1472. ——— And the miſtake is no other than this: By the 8 & 9 *W.* *c.* 25, Every pedlar or other ſuch perſon travelling as aforeſaid was to pay (for that year only) a duty of 4 l, and a further additional duty of 4 l *for each horſe, aſs, or mule, or other beaſt bearing or drawing burden, he or ſhe ſhould ſo travel with.* This ſtatute of the 9 & 10 *W.* *c.* 27, re-enacts the ſame for three years (and the ſaid duties afterwards were made perpetual); only in this latter act, the words in the tranſcript have been dropped, which are neceſſary to compleat the ſenſe, and to anſwer the intention of the legiſlature; for evidently, the ſentence ought to have run thus,——

the

the ſum of 4 l *for each year, for each horſe, aſs, or mule, or other beaſt bearing or drawing burden, he or ſhe ſhall ſo travel with.*

Payment of the duty.

2. And every ſuch perſon, on receiving his licence, ſhall pay to whom the commiſſioners of the treaſury, or three of them, ſhall appoint for licenſers, or their deputy, half the duty, and give ſecurity by bond, with one or more ſureties, to the king, for payment of the other half at the end of ſix kalendar months, unleſs he ſhall chuſe to pay down the other half, in which caſe he ſhall be allowed after 2 s in the pound for prompt payment. 9 & 10 *W. c.* 27. *ſ.* 2.

Granting the licence.

3. And the commiſſioners for theſe duties, or two of them, ſhall (on the receipt and ſecurity given as aforeſaid) grant licences to be by them ſubſcribed; for which ſhall be taken only 1 s, unleſs ſuch perſon travel with a horſe or beaſt, and in that caſe ſhall be paid only 2 s, above the duties. 9 & 10 *W. c.* 27. *ſ.* 4.

Trading without a licence, or refuſing to ſhew it.

4. And if any ſuch perſon be found trading as aforeſaid, without, or contrary to ſuch licence; or if on demand made by any juſtice of the peace, mayor, conſtable, or other peace officer of any town corporate or borough, where he ſhall ſo trade, ſhall not have his licence ready to be produced; *he ſhall forfeit* 12 l, half to the informer, and half to the poor of the pariſh wherein the offender ſhall be diſcovered; and for nonpayment thereof, ſhall ſuffer as a common vagrant, and be committed to the houſe of correction. 9 & 10 *W. c.* 27. *ſ.* 3. 3 & 4 *An. c.* 4. *ſ.* 4.

He ſhall forfeit 12 l] *M.* 5 *G. K.* and *Beck.* Although the ſtatute here mentions nothing of *conviction*, yet nevertheleſs there ought to be a formal conviction; and a certiorari will lie for the removal of it. *Str.* 127.

And if any conſtable or other officer aforeſaid, ſhall refuſe or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witneſs before one juſtice where the offence ſhall be committed; he ſhall forfeit 40 s, by diſtreſs and ſale by warrant of ſuch juſtice, half to the poor, and half to the proſecutor. 9 & 10 *W. c.* 27. *ſ.* 7.

And any perſon may ſeize and detain any ſuch hawker, pedlar, petty chapman, or other trading perſon, till he produce his licence if he have any, or if he be found trading without a licence, for ſuch reaſonable time as he may give notice to the conſtable, churchwarden, overſeer, or ſome other pariſh officer, who ſhall carry ſuch perſon ſo ſeized before a juſtice; who ſhall, either on confeſſion, or proof by

by witneſs upon oath, convict the offender, and by his warrant cauſe the ſum of 12 l to be forthwith levied by diſtreſs and ſale of the offender's goods, wares, or merchandizes. 9 & 10 *W.* *c.* 27. *ſ.* 8.

Lending licences.

5. If any perſon ſhall lend or let out to hire his licence, he and alſo the perſon trading under colour thereof, ſhall forfeit each 40 l, half to the king, and half to him that ſhall ſue in any court of record. 3 & 4 *An.* *c.* 4. *ſ.* 4.

Counterfeiting licences.

6. If any perſon ſhall forge or counterfeit, or travel with a forged or counterfeited licence; he ſhall forfeit 50 l, half to the king and half to him that ſhall ſue in the courts at *Weſtminſter*, and ſhall alſo be liable to be puniſhed for forgery. 9 & 10 *W.* *c.* 27. *ſ.* 5.

Exceptions.

7. But nothing herein ſhall prohibit any perſon from ſelling acts of parliament, forms of prayer, proclamations, gazettes, licenſed almanacks, or other printed papers licenſed by authority; or any fiſh, fruits, or victuals; nor to hinder any perſon who is the real worker or maker of any goods or wares, or his children, apprentices, ſervants, or agents, from carrying abroad, expoſing to ſale, or ſelling any of the ſaid goods and wares of his own making, in any publick fair, market, or elſewhere; nor any tinker, cooper, glazier, plummer, harneſs mender, or other perſon uſually trading in mending kettles, tubs, houſhold goods, or harneſs, from going about and carrying with him proper materials for mending the ſame. 9 & 10 *W.* *c.* 27. *ſ.* 9.

Provided alſo, that perſons trading in the woollen and linen manufactures of this kingdom, and ſelling the ſame by wholeſale, ſhall not be deemed hawkers, pedlars, or petty chapmen: but that ſuch perſons, and thoſe that ſhall be immediately employed under them to ſell by wholeſale only, may carry abroad, expoſe, and ſell the ſaid manufactures. 3 & 4 *An.* *c.* 4. *ſ.* 14.

Manufactures of this kingdom] *E.* 2 *G.* 3. *Maxwell* and *Mayer.* The plaintiff *Maxwell* was a native of *Scotland*, and carried linen goods of the manufacture of *Scotland* from town to town in *England*, and expoſed them to ſale in a room in each town, by wholeſale only. The queſtion was, Whether the plaintiff was intitled to the benefit of exemption by this clauſe, which exempts only the manufactures of *this kingdom*; which, being before the union, could only mean the manufactures of the kingdom of *England*. But the court were of opinion, that the manufacture of *Scotland* is the manufacture of this kingdom. *Burr. Manſf.* 1314. [Note, By the articles of union,

5 *An.*

5 *An.* *c.* 8. *Art.* 18. The laws concerning the regulation of trade ſhall be the ſame throughout the whole united kingdom.]

Alſo no maker or wholeſale trader in *Engliſh* bone lace, ſhall be deemed a hawker, pedlar, or petty chapman. 4 *G.* *c.* 6.

Alſo nothing herein ſhall extend to hinder any perſon from ſelling any goods in any publick fair or market. 9 & 10 *W.* *c.* 27. *ſ.* 12.

And nothing herein ſhall give any power for the licenſing of ſuch perſons to ſell any goods in cities, boroughs, towns corporate, or market towns, otherwiſe than they might have done before. 9 & 10 *W.* *c.* 27. *ſ.* 15.

8. Perſons ſued for any thing done herein, may plead the general iſſue, and have treble coſts. 9 & 10 *W.* *c.* 27. *ſ.* 6. Treble coſts.

Hawks and hawking. See **Game.**

Hay.

THE 2 *W.* *ſeſſ.* 2. *c.* 8. and 8 & 9 *W.* *c.* 17. and 31 *G.* 2. *c.* 40. do contain regulations concerning the ſelling of hay, ſtraw, and cattle within the bills of mortality, which are not general enough to be here inſerted at large.

Hedge breaking. See **Wood.**

Hemp.

1. BY the 33 *H.* 8. *c.* 17. It ſhall not be lawful to any perſon to water any hemp or flax, in any river, running water, ſtream, brook, or other common pond, where beaſts uſed to be watered; on pain that every perſon offending ſhall forfeit 20 s, half to the king, and half to the party grieved, or any other who ſhall ſue in any court of record, leet, or law day. Watering hemp or flax.

2. By the 21 *G.* 3. *c.* 58. (which is of force for five years from Aug. 1, 1782, &c. certain regulations are eſtabliſhed Encouraging the growth of hemp or flax.

eſtabliſhed for the encouragement of the growth of hemp and flax; whereby a ſum not exceeding 1500 l yearly ſhall be paid, after the rate of 3 d a ſtone for hemp, and 4 d a ſtone for flax, to be paid to the grower or other perſon who breaks and prepares the ſame for market.

Which grower, or other perſon claiming, ſhall exhibit his claim in writing, ſigned by him, and atteſted by two pariſh officers of their belief of the truth thereof, to a juſtice, who ſhall counterſign and tranſmit the ſame to the next ſeſſions.

At which ſeſſions, the juſtices ſhall publiſh the names and places of abode of the perſons who have claimed, and the quantities for which they claim: And at the Midſummer ſeſſions then next following, the juſtices ſhall finally aſcertain and determine the truth of the ſaid claims, and the quantity of hemp and flax raiſed in ſuch reſpective county.

Perſons receiving ſuch bounty ſhall give bond (without ſtamps) to the clerk of the peace, in treble value of the bounty received and of the hemp or flax for which the ſame is claimed, that ſuch perſon is duly intitled to the ſaid bounty, according to the true intent and meaning of this act.

And at the midſummer ſeſſions yearly, the juſtices ſhall make up a ſtate of the claims allowed by them, and tranſmit the ſame to the commiſſioners for trade and plantations; who ſhall certify the ſame to the treaſury: And the commiſſioners of the treaſury ſhall thereupon iſſue their orders to the receivers of the land tax to pay, on the order of the quarter ſeſſions reſpectively, the ſums appropriated for each county.

And the juſtices in Michaelmaſs ſeſſions yearly ſhall advertiſe the ſaid bounties, with the conditions on which they are to be obtained.

Herring fiſhery.

IF any perſon ſhall damnify or deſtroy, without conſent of the ſociety of the free *Britiſh* fiſhery, any of the nets, ſails, cordage, ſtores, or other materials belonging to the ſaid ſociety; he ſhall, on conviction on the oath of two witneſſes before one juſtice, forfeit to the ſociety treble value, by diſtreſs; and for want of ſufficient diſtreſs, to be committed to the houſe of correction to hard labour for any time not exceeding three months, or till ſatisfac-

tion be made. Proſecution to be in ſix kalendar months. 28 G. 2. c. 14. ſ. 9.

Hides and ſkins. See **Leather.**
High conſtable. See **Conſtable.**
High treaſon. See **Treaſon.**

Highways in general.

NOTE; Bridges repaired by the pariſh or townſhip, and which conſequently come under the cognizance of the ſurveyor of the highways, are comprehended under this title: County bridges are treated of under title **Bridges.**

For the ordering of ſtreets in cities and market towns, ſee title **Scavengers.**

I. Concerning the highways in general.

II. Concerning turnpike roads in particular.

I. Concerning the highways in general.

I. What is a highway.
II. Of the ſpecial ſeſſions to be held for the highways.
III. Appointment of Surveyors.
IV. Who are liable to repair, and in what proportion.
V. Compoſition inſtead of labour.
VI. Working.
VII. Materials how to be procured.
VIII. Removing obſtructions and annoyances.
IX. Direction poſts, blocks, mile ſtones, water marks, and battlements of bridges.
X. Breadth of wheels, and number of horſes.
XI. Breadth, widening, changing, and diverting of highways.
XII. Aſſeſſments how to be made.

XIII. Pe-

XIII. Penalty of hindring the execution.
XIV. Penalty of the jurveyor for neglect of duty.
XV. Surveyor's account.
XVI. Preſentment or indictment of highways in general.
XVII. Preſentment by a juſtice.
XVIII. Levying of aſſeſſments, fines, and forfeitures.
XIX. Appeal.
XX. Limitation of actions.

I. What is a highway.

Three kinds of highways.

1. There are three kinds of ways; (1.) a foot way. (2.) A foot and horſe way, which is alſo a pack or drift way. (3.) A foot, horſe, and cart way. 1 *Inſt.* 56.

Difference between a highway and a private way.

2. It ſeemeth that any one of the ſaid ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is alſo a thoroughfare to other towns, may properly be called a highway. 1 *Haw.* 201.

For there were highways before there were market towns. And if it were eſſential to the conſtituting of a highway, that it ſhould expreſly lead from market town to market town; then it would follow, that the lord of a market, by forfeiting or ſurrendring his charter, might cauſe that to ceaſe to be a highway, which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby conſequentially change the way to it from a private way into a highway.

And therefore, the diſtinction which is taken in ſome books, concerning this matter, ſeems to be very reaſonable; that every way from town to town may be called a highway, becauſe it is common to all the king's ſubjects; and conſequently that a nuſance therein is a common nuſance, and puniſhable by indictment; but that a way to a pariſh church, or to the common fields of a town, or to a private houſe, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of ſuch pariſh, houſe, or village only, may be called a private way, but not a highway, becauſe it belongeth not to all the king's ſubjects, but only to ſome particular perſons, each of which, as it ſeems, may have an action on the caſe for a nuſance therein. 1 *Haw.* 201.

So

So if I have a private way without a gate, and a gate is hung up; an action lies upon the caſe, for I have not my way as I had before. *Litt. R.* 267.

So if one grants me a way, and afterwards digs trenches in it to my hindrance; I may fill them up again. *Godb.* 53.

But if a way which a man has, becomes not paſſable, or becomes very bad, by the owner of the land tearing it up with his carts, and ſo the ſame be filled with water; yet he who has the way cannot dig the ground to let out the water, for he has no intereſt in the ſoil. *Godb.* 52. But in ſuch caſe, he may bring his action againſt the owner of the land for ſpoiling the way, or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

But where a private way is ſpoiled by thoſe who have a right to paſs thereon, and not thro' the default of the owner of the land; it ſeemeth that they who have the uſe and benefit of the way ought to repair it, and not the owner of the ſoil, unleſs he is bound thereto by cuſtom or ſpecial agreement.

How far outlets are part of the highway.

3. It hath been holden, that if there be an highway in an open field, and the people have uſed time out of mind, when the ways are bad, to go by outlets on the land adjoining, ſuch outlets are parcel of the way; for the king's ſubjects ought to have a good paſſage, and the good paſſage is the way and not only the beaten track; from whence it follows, that if ſuch outlets be ſown with corn, and the beaten track be foundrous, the king's ſubjects may juſtify going upon the corn. 1 *Haw.* 201.

How far a river may be an highway.

4. In books of the beſt authority, a river common to all men is called an highway. 1 *Haw.* 201.

To whom the freehold of an highway belongeth.

5. The freehold of the highway is in him that hath the freehold of the ſoil; but the free paſſage is for all the king's liege people. 2 *Inſt.* 705.

H. 8. *G.* 2. Sir *John Lade* againſt *Shepherd.* Upon trial of an action of treſpaſs, a caſe was made; that the place where the ſuppoſed treſpaſs was committed, was formerly the property of the plaintiff, who ſome years ſince built a ſtreet upon it, which has ever ſince been uſed as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof reſted on the highway. And it was inſiſted for the defendant, that by the plaintiff's making it a ſtreet, it was a dedication of it to the publick; and therefore however he might be liable to an indictment for a nuſance, yet the plaintiff could not ſue him

as for a treſpaſs on his private property. But by the court; it is certainly a dedication to the public, ſo far as the public has occaſion for it, which is only for a right of paſſage: But it never was underſtood to be a transfer of the abſolute property in the ſoil. So the plaintiff had judgment. *Str.* 1004.

In a caſe, *M.* 13 *G.* 3. concerning the right to the ſoil in a highway, lord Mansfield ſaid, that where no perſon claims the property of the lands on either ſide of the highway, the preſumption is in favour of the lord of the manor: But if the highway goes thro' the property of others, the preſumption is in favour of the owners of the land on each ſide. But in either caſe, the preſumption only ſtands, till the contrary be proved. *Loffi.* 358.

II. Of the ſpecial ſeſſions to be held for the highways.

The juſtices ſhall hold a ſpecial ſeſſions for the highways, in the week next after the Michaelmaſs general quarter ſeſſions yearly. 13 *G.* 3. *c.* 78. *ſ.* 1.

And any two juſtices, within their reſpective limits, may, whenever they ſhall judge proper, hold a ſpecial ſeſſions, and adjourn the ſame as they ſhall think fit; cauſing notice to be given of the time and place of holding ſuch ſpecial ſeſſions, and of the adjournments thereof, to the ſeveral juſtices acting and reſiding within ſuch limits, by the high conſtable or other proper officer. *ſ.* 61.

III. Appointment of ſurveyors.

Notice of the time and place of appointment.

1. The juſtices ſhall hold ſuch Michaelmaſs ſpecial ſeſſions as aforeſaid, at ſuch convenient place within their reſpective limits, as they in their diſcretion ſhall judge proper:

And ſhall give notice (A) of the time and place to the conſtables of the reſpective pariſhes, townſhips, or places, at leaſt ten days before the holding of the ſaid ſeſſions. 13 *G.* 3. *c.* 78. *ſ.* 1.

Liſts to be made.

2. On Sep. 22, yearly, unleſs that day be Sunday, and then on the day following, the conſtables, churchwardens, ſurveyors of the highways, and houſholders aſſeſſed to any parochial or public rate, ſhall aſſemble at the church or chapel, or if there be no church or chapel, then at the uſual place of public meetings, at the hour of eleven in the forenoon: And the major part of them ſo aſſembled

ſembled ſhall make a liſt of the names of at leaſt ten perſons living within ſuch diſtrict, each of whom hath an eſtate in lands, tenements, or hereditaments, lying within ſuch diſtrict, in his own right or in the right of his wife, of the value of 10 l by the year,—or a perſonal eſtate of the value of 100 l,—or occupier of a tenement of the yearly value of 30 l. And if there ſhall not be ten perſons ſo qualified, they ſhall inſert in ſuch liſt the names of ſo many as are ſo qualified, together with the names of ſo many of the moſt ſufficient and able inhabitants not ſo qualified as ſhall make up the number ten, if ſo many can be found; if not, ſo many as ſhall be there reſident—to ſerve the office of ſurveyor of the highways. 13 *G.* 3. *c.* 78. *ſ.* 1.

Duplicate to be tranſmitted to a juſtice.

3. And the conſtable ſhall, within 3 days after ſuch meeting, tranſmit a duplicate (B) of ſuch liſt to one of the juſtices living near to ſuch pariſh or place. 13 *G.* 3. *c.* 78. *ſ.* 1.

Notice to the perſons in the liſt.

4 And ſhall alſo, within 3 days after making the ſaid liſt, give perſonal notice to, or cauſe notice in writing (C) to be left at the place of abode of the ſeveral perſons contained in ſuch liſt, informing them of their being ſo named; to the intent that they may ſeverally appear before the juſtices at the ſaid ſpecial ſeſſions, to accept ſuch office if they ſhall be appointed thereto, or to ſhew cauſe, if they have any, againſt their being ſo appointed. 13 *G.* 3. *c.* 78. *ſ.* 1.

Liſt returned to the ſpecial ſeſſions.

5. And ſhall alſo return and deliver the original liſt (B) to the juſtices at their ſaid ſpecial ſeſſions to be holden in the week next after the Michaelmaſs general quarter ſeſſions. 13 *G.* 3. *c.* 78. *ſ.* 1.

Appointment and charge.

6. And the juſtices then and there, from the ſaid liſts, according to their diſcretion, and the largeneſs of the pariſh, townſhip, or place, ſhall, by warrant under their hands and ſeals, appoint (D) one, two, or more of ſuch perſons as aforeſaid, if he or they ſhall in the opinion of ſuch juſtices be qualified for the office; if not, one, two, or more of the other ſubſtantial inhabitants, or occupiers of lands, tenements, woods, tithes, or other hereditaments, within ſuch pariſh, townſhip, or place, living within 3 miles thereof and within the ſame county, fit and proper to ſerve the office, if any ſuch can be found. 13 *G.* 3. *c.* 78. *ſ.* 1.

Which appointment ſhall by the conſtable be notified to every perſon ſo appointed, within 3 days after ſuch appointment, by ſerving him with the ſaid warrant, or by leaving the ſame or a true copy thereof at his houſe or uſual place of abode. *Id.*

And every perſon ſo appointed, if he accepts the ſaid office, ſhall be ſurveyor of the highways for the year enſuing, and ſhall take upon him and duly execute the ſaid office. *Id.*

Provided, that no perſon who hath been appointed and ſerved the office for one year, ſhall be liable to be appointed again for the ſame pariſh or place within 3 years from the time of ſuch firſt appointment and ſervice, unleſs he ſhall conſent thereto. *Id.*

And the ſaid juſtices ſhall then and there give ſuch of the ſaid ſurveyors as ſhall perſonally appear before them a charge, for the better performance of their duty. *Id.*

Penalty on refuſal to ſerve, and others appointed with ſalaries.

7. If any of the perſons ſo appointed, whoſe names were contained in the liſt, and who were ſerved with the ſaid notice, ſhall refuſe or neglect to appear at the ſaid ſpecial ſeſſions and accept the ſaid office if appointed thereto in manner aforeſaid; or ſhall not, within 6 days after being ſerved with ſuch warrant of appointment, ſignify his acceptance thereof, either in perſon or by writing, to one of the ſaid juſtices;—he ſhall forfeit 5 l. And if any perſon ſo appointed, whoſe name was not contained in the liſt, ſhall refuſe or neglect to accept the ſaid office; or ſhall not, within 6 days after being ſerved with the appointment, ſhew to one of the juſtices ſigning ſuch appointment ſufficient cauſe why he ſhould not ſerve ſuch office;—he ſhall forfeit 50 s. *Id.*

But if no ſuch liſt ſhall be made and returned; or if the juſtices ſhall make an appointment, and the perſon appointed ſhall refuſe to ſerve; the ſaid juſtices or any two of them ſhall, at the ſaid ſpecial ſeſſions, or at ſome ſubſequent ſeſſions to be holden within one month after, nominate and appoint ſome other perſon whom they ſhall judge proper, and appoint him a ſalary out of the ſaid forfeitures and all other forfeitures, fines, penalties, aſſeſſments, and compoſitions within ſuch diſtrict as they ſhall think fit, not exceeding one eighth part of what ſhall have been raiſed by an aſſeſſment of 6 d in the pound for the uſe of the highways in ſuch diſtrict, where any ſuch aſſeſſment hath been raiſed; and obſerving the ſame reſtriction as near as they can, from the beſt information they ſhall be able to get of the probable amount of ſuch aſſeſſment, where none hath been already made: And the ſaid juſtices may, if they think fit, require the conſtables and ſurveyor, or any of them, to return to the ſaid juſtices, at ſuch time and place as they ſhall appoint, an account in writing of ſuch ſum which ſuch aſſeſſment of 6 d in the pound hath raiſed or will in his opinion raiſe within ſuch pariſh or place. *Id.*

And

And if the conſtables, churchwardens, ſurveyors, and ſuch houſeholders as aforeſaid ſhall neglect or refuſe to make ſuch liſt;—or if the conſtable ſhall not return ſuch liſt when made, and ſuch duplicate thereof as aforeſaid;—and give ſuch notice or notices;—and ſerve ſuch warrant as in this act is directed;—or if ſuch conſtable or ſurveyor ſhall neglect to return ſuch account of the amount of ſuch aſſeſſment as aforeſaid, when required;—he ſhall forfeit 40s. *Id. ſ.* 1.

Provided, that in cities, boroughs, and towns corporate, the juſtices ſhall not allow any ſalary, other than ſuch as ſhall be agreed on by two parts out of three of the perſons aſſembled in the reſpective pariſh, townſhip, or place, within ſuch city, borough, or town corporate. *Id. ſ.* 53, 54.

And in all caſes where the juſtices, upon neglect or refuſal of the perſon ſo appointed ſurveyor to accept the ſaid office ſhall appoint any other with a ſalary; they ſhall appoint one ſubſtantial inhabitant of ſuch pariſh, townſhip, or place, for *aſſiſtant* (E) to ſuch ſurveyor, until the next annual appointment of ſurveyors: And if the perſon ſo appointed aſſiſtant ſhall, on notice of ſuch appointment, refuſe to accept the office; he ſhall forfeit 50s. And in that caſe, they ſhall appoint any other ſubſtantial inhabitant for aſſiſtant to ſuch ſurveyor as aforeſaid: And if ſuch ſecond appointed aſſiſtant ſhall refuſe to accept that office; he ſhall in like manner forfeit 50s. And in ſuch caſe, they may appoint a third perſon in like manner to be aſſiſtant to ſuch ſurveyor; who ſhall be intitled to theſe laſt mentioned forfeitures, and alſo to ſuch further allowance by way of ſalary as the ſaid juſtices ſhall think proper; to be paid as the ſurveyor's ſalary is hereby directed to be paid. Provided, that no perſon ſo appointed aſſiſtant for one year ſhall be liable to be appointed aſſiſtant again for the ſame pariſh, townſhip, or place, within 3 years next following ſuch appointment, without his conſent. *ſ.* 2.

And the ſurveyor of any pariſh, townſhip, or place, who ſhall not reſide therein, but ſhall be appointed with ſuch ſalary as aforeſaid, ſhall (if required) give bond, upon paper without ſtamp, (for which the juſtices clerks ſhall have 6d and no more,) to account for the money that ſhall come to his hands as ſurveyor. *ſ.* 3, 48.

The ſaid aſſiſtant ſhall on requeſt aſſiſt the ſurveyor in calling in and attending the performance of the ſtatute duty; in collecting the compoſitions, fines, and forfeitures; in collecting the aſſeſſments; in making out and

ſerving notices; and in ſuch other matters as ſhall be reaſonably required of him by the ſurveyor in the execution of his office: And ſhall account to the ſurveyor for the money that ſhall come to his hands, on pain of forfeiting double. And if he ſhall make default in the performance of any of the duty required of him; he ſhall forfeit not exceeding 5l, nor leſs than 40 s. *ſ.* 4.

Abſtract of the act to be delivered to the ſurveyors.

8. The juſtices ſhall at every ſpecial ſeſſions to be held in the week next after the Michaelmaſs quarter ſeſſions, cauſe to be delivered a printed abſtract of the moſt material parts of this act, to every ſurveyor to be then appointed by them, as the charge hereby directed to be given. 13 *G.* 3. *c.* 78. *ſ.* 70.

Fee for the appointment and charge.

9. And the ſurveyors ſhall pay to the juſtices' clerks for the appointment and charge the ſum of one ſhilling. 13 *G.* 3. *c.* 78. *ſ.* 48, 70.

Appointment of ſpecial ſurveyors.

10. If two parts out of three of thoſe ſo to be aſſembled for the nomination of ſurveyors, ſhall agree in the choice of any particular perſon of ſkill and experience to ſerve the office of ſurveyor, and in ſettling a certain ſalary for his trouble therein, and ſhall return the name of ſuch perſon (B) together with the liſt, to the juſtices at their ſaid ſeſſions to be holden in the week next after the Michaelmaſs quarter ſeſſions; the ſaid juſtices may, if they think proper, appoint ſuch perſon to be ſurveyor for ſuch pariſh, townſhip, or place, and allow him the ſalary mentioned in ſuch agreement; which ſhall be raiſed and paid in the ſame manner, as the ſalary herein before mentioned is directed to be raiſed and paid. 13 *G.* 3. *c.* 78. *ſ.* 5.

Surveyor dying.

11. If a ſurveyor ſhall die, or become incapable to execute his office, before the next ſpecial ſeſſions for appointing ſurveyors; two juſtices, at a ſpecial ſeſſions, may appoint another whom they ſhall think proper, until the next ſpecial ſeſſions for appointing ſurveyors as aforeſaid. And if ſuch deceaſed ſurveyor had a ſalary, they may allow the ſame ſalary to his ſucceſſor, in proportion to the time he ſhall ſerve the ſaid office. 13 *G.* 3. *c.* 78. *ſ.* 5.

IV. Who are liable to repair, and in what proportion.

Pariſh in general to repair.

1. It ſeems to be agreed, that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the pariſh wherein they are; But there is no doubt, but particular perſons

perſons may be burdened with the general charge of repairing a highway, in two caſes; namely, in reſpect of an incloſure, or by preſcription.

Repairing in reſpect of an incloſure.

2. For, a man may be bound to the repair of a highway, in reſpect of an incloſure of the land wherein it lies; as where the owner of lands not incloſed, next adjoining to the highway, incloſeth his lands on both ſides thereof; in which caſe, he is bound to make a perfect good way, and ſhall not be excuſed for making it as good as it was at the time of the incloſure, if it were then any way defective; becauſe before the incloſure, the people uſed, when the way was bad, to go for their better paſſage, over the fields adjoining, out of the common track, which liberty is taken away by the incloſure. 1 *Haw.* 202.

And if the way is not ſufficient, any paſſenger may break down the incloſure, and go over the land, and juſtify it, till a ſufficient way is made. 3 *Salk.* 182.

Alſo it hath been holden, if one incloſe land on one ſide, which hath been antiently incloſed of the other ſide, he ought to repair all the way; but if there be not ſuch an antient incloſure of the other ſide, he ought to repair but half that way. 1 *Haw.* 202.

Therefore if there be an old hedge time out of mind on one ſide of the way, and a perſon having land on the other ſide makes a new hedge, ſuch perſon ſhall be charged with the whole repair. 1 *Sid.* 464.

But if one perſon makes an hedge on one ſide of the way, and another perſon makes an hedge on the other ſide of the way, they ſhall be chargeable to the repair thereof by moieties. *id.*

But it is ſaid, that wherever one is bound to repair a highway, or part thereof, in reſpect of an incloſure, and lays it open again as it was before, he ſhall be freed from the charge of ſuch repair. 1 *Haw.* 202.

Repairing by preſcription.

3. A particular perſon may be bound to repair a highway, in reſpect of a preſcription; and it is ſaid, that a corporation aggregate may be compelled to do it, by force of a general preſcription, that it ought and hath uſed to do it, without ſhewing that it uſed to do ſo in reſpect of the tenure of certain lands, or for any other conſideration; becauſe ſuch a corporation in judgment of law never dies, and therefore if it were ever bound to ſuch a duty, it muſt needs continue to be always ſo; neither is it any plea, that ſuch a corporation hath always done it out of charity, for what it hath always done, it ſhall be preſumed to have been always bound to do: But it is ſaid,

that a perſon cannot be charged with ſuch a duty, by a general preſcription from what his anceſtors have done, unleſs it be for ſome ſpecial reaſon, as the having land deſcended from ſuch anceſtors, which are holden by ſuch like ſervice. 1 *Haw.* 202.

Yet it ſeems, that an indictment charging a tenant in fee ſimple, with having uſed of right to repair ſuch a way by reaſon of the tenure of his land, is certain enough, without adding, that his anceſtors or thoſe whoſe eſtate he hath, have always ſo done; for that is implied. 1 *Haw.* 203.

But the indictment muſt ſet forth, where thoſe lands lie. 2 *H. H.* 181.

Under which head of preſcription, may be conſidered the caſe where, not the whole pariſh, but particular townſhips or other diviſions within the pariſh, have for time immemorial repaired particular roads within that pariſh: Which preſcription, being ancient, and without interruption, is preſumed to have had its origin by licence on an inquiſition of *ad quod damnum*, or other legal commencement. And it would be very prejudicial in large pariſhes, if every inhabitant were liable to repair throughout that whole pariſh, when the time occupied in going and returning might exceed the time appointed by the law for labour.

But a private agreement amongſt the inhabitants, not being ancient, nor confirmed on an inquiſition of *ad quod damnum*, that ſome of the inhabitants ſhall repair one part of the highway, and ſome of them another part, is not good: It may be binding amongſt the parties thereunto, ſo as on a breach thereof one party may have an action upon the caſe againſt the other; but with reſpect to the publick, they continue equally liable as before; for ſuch private agreement cannot alter the law.

In the caſe of *K.* and the Inhabitants of *Great Broughton* in *Cumberland*, *H.* 11 *G.* 3. an indictment was brought in the uſual form, alledging that there is, and was from the time whereof the memory of man is not to the contrary, a common and ancient king's highway, leading from *Flimby Parts* and *Woodſide* to the market town of *Wigton* in the ſaid county; and that a certain part of the ſame king's common highway, at the pariſh of *Bridekirk* in the county aforeſaid, was and yet is very ruinous and decayed; and that the inhabitants of the diviſion of *Great Broughton* in the pariſh of *Bridekirk* aforeſaid, the common highway aforeſaid (ſo as aforeſaid being in decay) from the time whereof the memory of man is not to the

trary, *ought to repair and amend*, when and ſo often as it ſhall be neceſſary. —— On a verdict being found againſt the inhabitants, a writ of error was brought in the king's bench; and the aſſignment of error was, that it is not ſhewn or alledged in the indictment, that the inhabitants of this diviſion *have uſed and been accuſtomed* and of right ought to repair and amend this highway, or in what right, or for what cauſe they ought to repair and amend it. On behalf of the defendants, it was objected, that by the common law, excluſive of cuſtom, preſcription, or other ſpecial obligation, the inhabitants of a particular diviſion of a pariſh are not bound to repair; and here is no cuſtom, preſcription, or particular reaſon ſhewn, for obliging them to repair this highway: It is only alledged in general, that they *ought to repair and amend it*, when and ſo often as ſhall be neceſſary. —— On the other hand it was contended, that it was ſufficiently charged as a preſcription: It is charged, that *from the time whereof the memory of man is not to the contrary* they ought to repair and amend it. A preſcription may be by implication; as particularly, *by reaſon of the tenure of their lands.* ——— By the court: At the common law, and of common right, the inhabitants of a pariſh at large are bound to repair the highways, and here is no reaſon ſhewn why this particular diviſion ſhould be obliged to do it. It ought to appear upon the face of the indictment, by what right the charge was laid upon this particular diviſion. If you lay a charge upon perſons againſt common right, you muſt ſhew how they are bound: and it is not enough to ſhew that they immemorially ought to repair, but it ſhould be ſhewn, that they *have repaired.* And the court therefore held this indictment for that reaſon to be bad, and reverſed the judgment. *Bur. Manſf.* 2700.

Repairs by private perſons how to be inforced.

4. The ſurveyor ſhall from time to time give information upon oath to the juſtices or two of them, of all ſuch highways, and of all bridges, cauſeways, and pavements upon ſuch highways as are out of repair, and ought to be repaired by any perſon or perſons, bodies politick or corporate, by reaſon of any grant, tenure, limitation or appointment of any charitable gift, or otherwiſe howſoever; and the ſaid juſtices ſhall limit a time for repairing the ſame; of which, notice ſhall be given by the ſurveyor to the occupier or occupiers of the lands or tenements liable to ſuch repairs, or to ſuch other perſon or perſons, bodies politick or corporate, as are chargeable with the ſame: And if ſuch repairs ſhall not be effectually made within the time ſo limited; the ſaid juſtices ſhall

ſhall preſent ſuch highways, bridges, cauſeways, or pavements, ſo out of repair, together with the perſon or perſons, bodies politick or corporate, liable to repair the ſame, at the next general quarter ſeſſions for the place where ſuch highway ſhall lie: And the juſtices there, if they ſee cauſe, may direct the proſecution to be carried on at the general expence of ſuch county, city, precinct, or liberty, and to be paid out of the general rates within ſuch juriſdiction. 13 *G.* 3. *c.* 78. *ſ.* 23.

And where any lands have been or ſhall be given for the maintenance of cauſeways, pavements, highways, and bridges; the perſons enfeoffed or truſted therewith ſhall let them to farm at the moſt improved yearly value, without fine. And the juſtices in their open ſeſſions ſhall inquire, by ſuch ways and means as they ſhall think fitting, into the value of ſuch lands; and order the improvement and employment of the rents and profits thereof, according to the direction of the donor, if they find that the perſons ſo intruſted have been negligent or faulty in the performance of their truſt. Except ſuch lands as have been given for the uſes aforeſaid to any college or hall in either of the univerſities of this kingdom, which have viſitors of their own. *ſ.* 51.

Proportion of labour.

5. The ſurveyor, together with the inhabitants and occupiers of lands, tenements, woods, tithes, and hereditaments, ſhall, at proper ſeaſons in every year, uſe their endeavours for the repair of the highways, and ſhall be chargeable thereto as followeth: That is to ſay,

Every perſon keeping a waggon, cart, wain, plough, or tumbrel, and *three* or more horſes or beaſts of draught uſed to draw the ſame, ſhall be deemed to keep a *team, draught, or plough*, and be liable to perform ſtatute duty with the ſame, in the pariſh, townſhip, or place where he reſides, and ſhall ſix days in every year (if ſo many days ſhall be found neceſſary) to be computed from Michaelmaſs to Michaelmaſs, ſend on every day, and at every place, to be appointed by the ſurveyor, for amendment of the highways in ſuch pariſh, townſhip, or place, *one* wain, cart, or carriage furniſhed after the cuſtom of the country with oxen, horſes, or other cattle, and all other neceſſaries fit to carry things for that purpoſe, and alſo *two able men* with the ſame: Which duty ſo performed ſhall excuſe every ſuch perſon from his duty in ſuch pariſh, townſhip, or place, in reſpect of all lands, tenements, woods, tithes, or hereditaments, not exceeding the annual value of 50 l, which he ſhall occupy therein. 13 *G.* 3. *c.* 78. *ſ.* 34.

Every

Every perſon keeping ſuch team, draught, or plough, and occupying in the *ſame* pariſh, townſhip, or place, lands, tenements, woods, tithes, or hereditaments of the yearly value of 50 l, *over and beyond* the ſaid yearly value of 50 l in reſpect whereof ſuch team duty ſhall be performed;——and every ſuch perſon occupying lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50 l, in any *other* pariſh, townſhip, or place beſides that wherein he reſides;——and every other perſon, *not* keeping a team, draught, or plough, but occupying lands, tenements, woods, tithes, or hereditaments, of the yearly value of 50 l, in any pariſh, townſhip, or place;——ſhall find and ſend one wain, cart, or carriage, furniſhed with not leſs than *three horſes*, or 4 oxen and one horſe, or 2 oxen and 2 horſes, and *two able men* to each wain, cart, or carriage: And in like manner for *every* 50 l a year reſpectively, which every ſuch perſon ſhall further occupy in any ſuch pariſh, townſhip, or place reſpectively; ſuch wains, carts, or carriages to be employed by the ſurveyor in repairing the highways within the pariſh, townſhip, or place where ſuch eſtate lies. *Id.*

Every perſon who ſhall *not* keep a team, draught, or plough, but ſhall occupy ſuch eſtate *under* the yearly value of 50 l, in the pariſh, townſhip, or place where he reſides, or in any other pariſh, townſhip, or place;——and every perſon *keeping* a team, draught, or plough, and occupying ſuch eſtate under the yearly value of 50 l, in any *other* pariſh, townſhip, or place than that wherein he reſides;——ſhall reſpectively contribute to the repair of the highways, and pay to the ſurveyor, in lieu of ſuch duty, the ſums following; *viz.* For every 20 s of the annual value of ſuch lands, tenements, woods, tithes, or hereditaments, the ſum of one penny for every day's ſtatute duty: and in like manner ſhall pay the ſum of one penny for every 20 s of the annual value of ſuch eſtate which he ſhall occupy in any ſuch pariſh, townſhip, or place reſpectively, above the annual value of 50 l and leſs than 100 l; and ſo for every 20 s that each progreſſive and intermediate annual value of 20 s which he ſhall ſo occupy, ſhall fall ſhort of the further increaſe of 50 l, in every pariſh, townſhip, or place where ſuch lands, tenements, woods, tithes, and hereditaments ſhall reſpectively lie, for every day's ſtatute duty ſo to be required as aforeſaid: which ſaid ſeveral ſums ſhall be conſidered as compoſitions, and ſhall be paid to the ſurveyor of the pariſh, townſhip, or place in which they are charged, for the uſe of the highways therein, at the time ſuch compoſitions are to be paid

paid under the authority of this act, or within ten days after; or, in default of ſuch payments, ſuch money ſhall be levied by diſtreſs, in like manner as the forfeitures for neglect of ſtatute duty. *ſ.* 34.

Provided, that no perſon keeping ſuch team, draught, or plough, and performing duty with the ſame as aforeſaid, in the pariſh, townſhip, or place where he reſides, and not occupying lands, tenements, woods, tithes, or hereditaments within the ſame, of the yearly value of 30 l, ſhall be obliged to ſend more than *one* labourer with ſuch team, draught, or plough. *ſ.* 34.

Every perſon who ſhall not keep a team, draught, or plough, but ſhall keep one or more *cart or carts*, and one or two horſes or beaſts of draught only, uſed to draw in each of ſuch carts upon the highways, ſhall be obliged to perform his ſtatute duty for the like number of days, with ſuch cart or carts, and horſe or horſes, or beaſts of draught, and *one labourer* to attend each cart; or to pay for the lands, tenements, woods, tithes, and hereditaments, which he ſhall occupy, according to the rate aforeſaid, at the option of the ſurveyor. *ſ.* 35.

Every perſon who ſhall keep a coach, poſt chaiſe, chair, or other wheel carriage, and not keep a team, draught, or plough, nor occupy 50 l a year in the pariſh, townſhip, or place where he reſides, ſhall pay to the ſurveyor 1 s in reſpect of every ſuch day's ſtatute duty, for every horſe which he ſhall draw in any ſuch carriage; or ſhall pay according to the value of the lands, tenements, or hereditaments which he ſhall occupy, at the option of the ſurveyor. *ſ.* 35.

Every *man* inhabiting in any pariſh, townſhip, or place, and being of the age of 18 and under the age of 60 years, not chargeable in any of the reſpects aforeſaid for 4 l a year or upwards, and not being *bona fide* an apprentice or menial ſervant, nor having performed the ſtatute duty or paid compoſition for the ſame in any other pariſh, townſhip, or place, for that year, ſhall by himſelf or one ſufficient labourer work upon every of the ſaid days, as he ſhall be directed by the ſurveyor. *ſ.* 35.

And if the teams, draughts, or ploughs, or any of them, ſhall not be thought needful by the ſurveyor, on any of the ſaid days; then every ſuch perſon who ſhould have ſent any ſuch team, draught, or plough according to the directions aforeſaid, ſhall, according to the notice given to him by the ſurveyor, ſend unto the ſaid work, for every one ſo ſpared, 3 able men; or to pay to the ſurveyor 4 s 6 d in lieu thereof. *ſ.* 35.

And

And where the employment for teams is of ſuch ſort, that two horſes will be ſufficient for one cart, or where a ſtand cart with one horſe ſhall be neceſſary, the ſurveyor may call upon any perſon liable to ſend a team, draught, or plough according to this act, who keeps one or more cart or carts, and 3 or more horſes, to ſend ſuch cart or carts, horſe or horſes, to perform his ſtatute duty, as the ſurveyor ſhall find moſt convenient; and he ſhall allow every ſuch ſtand cart and one horſe as half a team, and every cart and two horſes as two thirds of a team. And if a waggon ſhall be found neceſſary for any particular buſineſs, the ſurveyor may require the duty, or any part thereof, to be performed with ſuch waggon, by any perſon who keeps one. Which directions of the ſurveyor ſhall be obſerved, or the perſon liable to perform ſuch duty ſhall forfeit ſuch ſum as the duty ſo required of him ſhall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, draught, or plough. *ſ.* 36.

V. Compoſition inſtead of labour.

Any perſon liable to perform the duty by ſending a team, draught, or plough, with men, horſes, or oxen in manner aforeſaid, may compound for the ſame, if he thinks fit, by paying to the ſurveyor ſuch ſum as the juſtices at their Michaelmaſs ſpecial ſeſſions in every year ſhall adjudge to be reaſonable, not exceeding 6 s nor leſs than 3 s, for each team, draught, or plough, for each day; and in default of their adjudging the ſame, then the ſums of 4 s 6 d: —— for every cart and one horſe or beaſt of draught 2 s: —— for every cart with two horſes or beaſts of draught 3 s, —— for and in lieu of each day's duty. And every inhabitant liable to perform ſuch duty or labour, and not chargeable in any other reſpect, may compound for 4 d each day. *ſ.* 38.

Provided, that if it ſhall appear to the juſtices at their ſpecial ſeſſions to be held in the week next after the Michaelmaſs quarter ſeſſions, that in any place there will be a difficulty in procuring the neceſſary carriage, or a ſufficient number of labourers, without paying high and extravagant prices for the ſame; the ſaid juſtices may order the team duty, or ſo much thereof as they ſhall think fit, to be performed in kind, except in reſpect of ſuch teams as belong to perſons who do not occupy 30 l a year; and alſo may order the labourers, or ſuch part of them as they ſhall think fit, to perform the labour in kind, on being

being paid for ſuch labour the uſual wages given to labourers in ſuch pariſh, townſhip, or place, deducting thereout the ſum of 4 d for each day, being the compoſition hereby allowed for labourers. 13 G. 3. c. 78. ſ. 39.

Provided, that if part of ſuch teams or labourers only are required, it ſhall be directed by the ſaid order of the juſtices in ſome given proportion, as one half, third, or fourth part thereof; and the ſurveyor ſhall in that caſe, at a public veſtry put the names of all the perſons liable to ſend ſuch teams into one hat or box, and the names of all the perſons liable to perform ſuch labour into another hat or box; and ſome inhabitant then preſent ſhall draw out ſuch number from each, as ſhall be equal to the proportion ſo ordered by the juſtices; and the perſons ſo drawn ſhall perform ſuch duty in kind for that year. And if any ſuch order ſhall be made or continued in the ſubſequent year, the ſame method ſhall be obſerved, but the names drawn in the preceding year ſhall not be put into ſuch hat or box. And in every ſucceeding year, ſuch method and regulation ſhall be obſerved by the ſurveyor, as to render the duty ſo required to be performed in kind as equal amongſt the ſeveral perſons liable thereto as may be. Which order of the ſaid juſtices, ſo far as the ſame ſhall be extended, ſhall ſuperſede the ſaid power or liberty of compounding, and ſhall be binding and effectual to all intents and purpoſes, and ſhall continue in force until it ſhall be diſcharged or varied by the juſtices at ſome ſubſequent ſpecial ſeſſions to be held in the week next after Michaelmaſs quarter ſeſſions. ſ. 39.

And if any perſon ſhall keep a team, draught, or plough, and ſhall not occupy 30 l a year in the pariſh, townſhip, or place where he ſhall reſide, but ſhall in part maintain his horſes and beaſts of draught uſed in ſuch team, upon or from lands which he ſhall occupy in one or more adjacent pariſh or pariſhes; it ſhall be lawful for the juſtices, at ſome ſpecial ſeſſions, to mitigate and reduce the duty or compoſition in ſuch manner as they ſhall think reaſonable. ſ. 40.

Provided, that the ſurveyor ſhall on ſome Sunday in *November* yearly, cauſe ten days notice (F) at leaſt to be given in the church or chapel, and if there be no church or chapel, or no ſervice be performed therein, then at the moſt publick place there, and repeat the like notice on the next ſucceeding Sunday, of the time and place when and where perſons permitted and inclined to compound may ſignify to the ſurveyor their intention ſo to do; and every perſon ſignifying the ſame, who ſhall then,

then, or within one month after, pay to the ſurveyor the aforeſaid compoſition, ſhall be diſcharged from the performance of ſuch duty. And no compoſition ſhall be permitted, unleſs the ſame be paid at the day, or within the time aforeſaid. *ſ.* 41.

But where the occupation ſhall be changed, or a new occupant or inhabitant ſhall come to reſide, after the time appointed for the compoſition; ſuch occupant, or perſon coming to reſide, may be allowed to compound afterwards, provided they pay the compoſition money within 14 days after they ſhall enter upon the premiſſes. And every tenant or occupier, who intends to quit the poſſeſſion within ſix months from the time fixed for the compoſition, may compound for half the duty; and the ſucceeding tenant or occupier may compound or perform the duty in kind for the other half. *Id.*

Provided, that where a perſon ſhall keep a draught or plough, and no carriage; he ſhall pay to the ſurveyor 1 s for every horſe or pair of oxen or neat cattle uſed in ſuch draught or plough for each day's duty, or pay according to the yearly value of the eſtate which he occupies as aforeſaid, at the option of the ſurveyor. *ſ.* 42.

And whereas by ſeveral acts of parliament concerning turnpike roads, a certain part of the duty called ſtatute duty is directed to be performed on ſuch roads, and it may happen in ſuch places, that the ſeveral perſons liable thereto may have compounded for the ſame; in ſuch caſe, the ſurveyor of the pariſh, townſhip, or place, where ſuch compoſition ſhall have been made, ſhall pay to the turnpike treaſurer or ſurveyor, a proportionable part of the compoſition money ſo received, according to the number of days duty which ſuch perſons were liable to perform on ſuch turnpike road: which money ſhall be laid out on ſuch part of the ſaid turnpike road, as lies within the pariſh, townſhip, or place from which it was received, and not elſewhere. And if ſuch ſurveyor of the highways ſhall refuſe or neglect to pay to the turnpike treaſurer or ſurveyor ſuch part of the ſaid compoſition money ſo received by him, on demand thereof made, it ſhall be levied on his goods and chattels in like manner as penalties and forfeitures are to be levied by this act. *ſ.* 44.

VI. Working.

1. The juſtices at a ſpecial ſeſſions may, by writing under their hands and ſeals, order thoſe highways (not being turnpike) which in their opinion do moſt want repair, to be firſt amended, and at what time, and in what manner; The juſtices may order what roads ſhall be repaired firſt.

manner; according to which order (if ſuch there be) the ſurveyors ſhall proceed within their reſpective limits; 13 G. 3. c. 78. ſ. 25. If the juſtices make no ſuch order, then the ſurveyors ſhall have the like power of direction.

Exception of three months in the year.

2. Provided that, in order to prevent as much as poſſible any inconvenience to perſons liable to perform ſtatute duty, it ſhall be lawful for the inhabitants of any pariſh, townſhip, or place, at a veſtry or other public meeting, to appoint 3 months in every year, within which no ſtatute duty ſhall be performed; *viz.* one month in the ſpring, to be called the ſeed month; one month in the ſummer, for the hay harveſt; and one month in the ſummer, for the corn harveſt: Provided, that notice in writing be given of the time ſo appointed, to the ſurveyor of ſuch pariſh, townſhip, or place, and alſo to the ſurveyor of every turnpike road lying within the ſame, within 3 days after ſuch meeting, and 14 days at leaſt before the beginning of each of ſuch months. 13 G. 3. c. 78. ſ. 43.

Notice of the time and place of working.

3. The ſurveyor ſhall give, or cauſe to be left at the houſe or uſual place of abode of every perſon liable to perform ſtatute duty, four days notice (G) at the leaſt, of the day, hour, and place, upon which each of the ſaid day's duty ſhall be required to be performed. 13 G. 3. c. 78. ſ. 37.

Manner of working.

4. And the ſurveyor ſhall fairly and equally demand and require the duty and labour from every perſon without favour or partiality. And the ſeveral perſons ſhall reſpectively bring with them ſuch ſhovels, ſpades, picks, mattocks, and other tools and inſtruments, as are uſeful and proper for the purpoſes aforeſaid. 13 G. 3. c. 78. ſ. 35.

And all the ſaid perſons and carriages ſhall diligently perform the work and labour to which they ſhall be appointed by the ſurveyor, for 8 hours in every of the ſaid days, within ſuch pariſh, townſhip, or place, or in getting and carrying materials in and from any other pariſh, townſhip, or place, to be employed in the repair of the highways of the pariſh, townſhip, or place, for which they ſhall be required to perform ſuch duty and labour as aforeſaid. *id.*

Penalty of not working according to the direction of the ſurveyor.

5. If any perſon ſending a team as aforeſaid, ſhall not ſend a ſufficient labourer beſides the driver (except as herein before mentioned); or if any ſuch labourer or driver, or any other labourer, or the driver of any cart, ſhall refuſe to work and labour according to the direction of

of the ſurveyor; or if any driver ſhall refuſe to carry proper and ſufficient loads: the ſurveyor may diſcharge every ſuch team, cart, or labourer, and recover from the owner of every ſuch team or cart, the forfeiture which every ſuch perſon would have incurred, in caſe no team, cart, or labourer reſpectively had been ſent. 13 *G.* 3. *c.* 78. *ſ.* 35.

6. And every perſon making default in finding and ſending ſuch wain, cart, or carriage, with ſuch able men as aforeſaid, ſhall forfeit 10 s; for every default in ſending a cart with one horſe and one man, 3 s; and for not ſending a cart with two horſes and one man, 5 s; and every perſon making default in ſending any ſuch labourer, or in performing ſuch labour at the time and place, and in the manner directed by this act, or in paying compoſition for the ſame, ſhall, for every ſuch neglect forfeit 1 s 6 d: All which forfeitures ſhall be applied for the uſe of the highways within the pariſh, townſhip, or place, where the ſame ſhall ariſe. And the ſurveyor ſhall, with all convenient ſpeed, proceed for the recovery thereof, that the ſame may be recovered before he makes up his accounts. 13 *G.* 3. *c.* 78. *ſ.* 37. Penalty of not attending.

7. If in any place it ſhall not be neceſſary to call forth the whole duty in any year, it ſhall be abated in a juſt and equal proportion. 13 *G.* 3. *c.* 78. *ſ.* 37. Caſe where the whole duty is not needed.

VII. Materials how to be procured.

1. The ſurveyor may take and carry away ſo much of the rubbiſh or refuſe ſtones of any *quarry* within his diſtrict (except ſuch as ſhall have been got by the ſurveyor of any turnpike road) without the licence of the owner of ſuch quarry, as he ſhall judge neceſſary for the amendment of the ſaid highways; but ſhall not dig or get ſtone in ſuch quarry without leave of the owner. 13 *G.* 3. *c.* 78. *ſ.* 27. Getting materials.

It ſhall alſo be lawful for ſuch ſurveyor, for the uſe aforeſaid, in any *waſte* land, or *common* ground, *river*, or *brook*, within his diſtrict, or within any other pariſh, townſhip, or place, wherein gravel, ſand, chalk, ſtone, or other materials are likely to be found (in caſe ſufficient cannot be conveniently had within the pariſh, townſhip, or place where they are to be employed, and in caſe ſufficient ſhall be left for the uſe of the roads in ſuch other pariſh, townſhip, or place) to ſearch for, dig, get, and carry away the ſame; ſo as he do not thereby divert or interrupt the courſe of ſuch river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the ſame out of any river

or brook within the diſtance of 100 feet above or below any bridge, nor within the like diſtance of any dam or wear: —— And likewiſe to gather *ſtones* lying upon any lands or grounds within the pariſh, townſhip, or place where ſuch highway ſhall be, for ſuch ſervice and purpoſe: —— And to take and carry away ſo much of the ſaid materials, as by him ſhall be thought neceſſary for the amendment of the ſaid highways, without making any ſatisfaction for the ſaid materials: But ſatisfaction ſhall be made for all damages done to the lands of any perſon by carrying away the ſame, in the manner herein after directed for getting and carrying materials in incloſed lands or grounds. *Id.*

But no ſuch ſtones ſhall be gathered without the conſent of the occupier of the lands, or a licence from a juſtice, after having ſummoned the occupier and heard his reaſons (if he ſhall appear and give any) for refuſing his conſent. *Id.*

And provided alſo, that nothing herein contained relative to the gathering or getting of ſtones, ſhall extend to any quantity of land (being private property) covered with ſtones thrown up by the ſea, commonly called Beach. *ſ.* 28.

And it ſhall be lawful for the ſurveyor, for the uſe aforeſaid, to ſearch for, dig, get, and carry away ſand, gravel, chalk, ſtone, or other materials, if ſufficient cannot conveniently be had within ſuch waſte lands, common grounds, rivers, or brooks, in and through any of the ſeveral or *incloſed* grounds of any perſon whomſoever, within the pariſh, townſhip, or place where the ſame ſhall be wanted, or by licence of two juſtices at a ſpecial ſeſſions, within any other pariſh, townſhip, or place, adjoining or lying near to the highway for which ſuch materials ſhall be required, if it ſhall appear to ſuch juſtice that ſufficient materials cannot be conveniently had in the pariſh, townſhip, or place where ſuch highways lie, or in the waſte lands, or common grounds, rivers, or brooks of ſuch adjacent pariſh, townſhip, or place, and that a ſufficient quantity of materials will be left for the uſe of the pariſh, townſhip, or place where the ſame ſhall be (ſuch lands not being a garden, yard, avenue to a houſe, lawn, park, paddock, or incloſed plantation); the ſurveyor making ſuch ſatisfaction for the damage to be done to ſuch lands by the getting and carrying away the ſame, as ſhall be agreed upon between him and the owner, occupier, or other perſon intereſted, in the preſence and with the approbation of

of two or more ſubſtantial inhabitants; and if they cannot agree, then to be ſettled by a juſtice of the limit where the lands lie. *ſ.* 29.

And in ſuch places where, from the want of other materials, burnt *clay* may be ſubſtituted in the place thereof, it ſhall be lawful for the ſurveyor to dig clay in ſuch places as he is authorized to dig chalk or gravel, and to dry the ſame upon the lands adjoining, and to burn the ſame upon any waſte lands or common grounds, and to carry ſuch clay in ſuch manner as other materials are allowed to be carried by this act, upon making ſuch ſatisfaction for the damages within the ſeveral incloſed lands where ſuch clay ſhall be placed or carried, as herein directed with regard to other materials. *id.*

Provided, that when the owner of ſuch incloſed lands ſhall have occaſion for any ſuch materials for the repair of any highway or other roads or ways upon his eſtate, or which he ſhall be under obligation to repair, and ſhall give notice to the ſurveyor that he apprehends there will not be ſufficient for thoſe purpoſes and alſo for the uſe of the public highways; in ſuch caſe the ſurveyor ſhall not be permitted to dig or take ſuch materials without the conſent of ſuch owner, or an order of two juſtices, after having ſummoned and heard the ſaid owner or occupier, or his ſteward or agent: which juſtices ſhall permit or reſtrain ſuch power, in ſuch manner, and under ſuch directions, as to them ſhall ſeem juſt. *id.*

Provided, that no ſtone, gravel, or materials, to be dug for the uſe of any other pariſh, townſhip, or place than that wherein the ſame are found, ſhall be removed or carried from the place where they ſhall be ſo dug, at any other time than between the firſt of April and the firſt of November, or in the time of hard froſt in the winter ſeaſon. *ſ.* 32.

And if any perſon ſhall dig or cauſe to be dug materials contrary to the directions of this act, whereby any bridge, mill, building, dam, highway, ford, mines, or tin works, may be damaged or endangered; he ſhall forfeit not exceeding 5 l nor leſs than 20 s, at the diſcretion of the court or juſtices before whom complaint ſhall be made. *ſ.* 33.

And where a ſufficient quantity of ſtone, gravel, chalk, or other materials, cannot be provided and carried by the labourers and teams within any pariſh, townſhip, or place; the ſurveyor ſhall contract for the getting and carrying thereof (in preſence of the aſſiſtant, if any ſuch be appointed) at a meeting to be held for that purpoſe; of

which, ten days notice in writing ſhall be given, by fixing the ſame upon the door of the church or chapel, or if there be no church or chapel, at the moſt public place there; which notice ſhall ſpecify the work to be done, and the time and place for letting thereof. And if the ſurveyor ſhall have any ſhare or intereſt in ſuch contract, or in any other contract for work or materials, or ſhall upon his own account let to hire any team, or ſell or diſpoſe of any timber, ſtone, or other materials (unleſs a licence in writing for the ſale of ſuch materials, or for letting to hire ſuch team, be firſt obtained from a juſtice); he ſhall forfeit 10 l, and be for ever after incapable to be employed as a ſurveyor with a ſalary. *ſ.* 49.

Filling up holes.

2. If any ſurveyor or perſon employed by him ſhall, by reaſon of the ſearching for, digging, or getting any gravel, ſand, ſtones, chalk, clay, or other materials, make any pit or hole in ſuch lands, rivers, or brooks as aforeſaid, wherein ſuch materials ſhall be found; he ſhall forthwith cauſe the ſame to be ſufficiently fenced off, and ſuch fence ſupported and repaired, during ſuch time as the ſaid pit or hole ſhall continue open; and after having dug up ſufficient materials in ſuch pit or hole, he ſhall within 14 days cauſe the ſame to be filled up, ſloped down, or fenced off, and ſo continued. And where no materials ſhall be found, he ſhall within 3 days cauſe ſuch hole or pit to be filled up, levelled, and covered with the turf or clod which was dug out of the ſame. 13 *G.* 3. *c.* 78. *ſ.* 31.

And every ſurveyor ſhall, within 20 days after he ſhall be appointed to that office, cauſe all the pits and holes which ſhall then be open, and not likely to be further uſeful, to be filled up or ſloped down in manner aforeſaid; and if they are likely to be further uſeful, he ſhall ſecure them by poſts, and rails, or other fences, to prevent accidents to perſons or cattle. *id.*

And if ſuch ſurveyor or other perſon ſhall neglect to fill up, ſlope down, or fence off ſuch pit or hole, in manner and within the time aforeſaid; he ſhall forfeit 10 s. And if he ſhall neglect to fence off ſuch pit or hole, or to ſlope down the ſame, as herein before directed, for ſix days after he ſhall have received notice for either of thoſe purpoſes from a juſtice, or from the owner or occupier of ſuch ſeveral ground, river, or brook, or any perſon having right of common within ſuch common or waſte lands; he ſhall on conviction before one juſtice, forfeit not exceeding 10 l, nor leſs than 40 s; the ſame to be applied in the fencing off, filling up, or ſloping down ſuch pit or hole an

and towards repair of the roads in the parish or place where the offence was committed, as such justice shall direct. *id.*

VIII. Removing obstructions and annoyances.

Annoyances in general.

1. There is no doubt, but that all injuries whatsoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it less commodious to the king's people, are public nusances at common law. 1 *Haw.* 212.

And by the common law, any one may abate a nusance to a highway, and remove the materials, but not convert them to his own use. 1 *Haw.* 214.

Also it seemeth that an heir may be indicted for continuing an incroachment, or other nusance to a highway, begun by his ancestor; because such a continuance thereof amounts in the judgment of law to a new nusance. 1 *Haw.* 214.

To suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired, is a nusance also at common law. 1 *Haw.* 212.

And it seemeth clear, that it is a nusance at common law, to suffer the boughs of trees growing near the highway, to hang over the road in such a manner, as thereby to incommode the passage. 1 *Haw.* 212.

And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same; and it seems clear, that any person may justify the lopping such trees, so far as to avoid the nusance. 1 *Haw.* 213.

A gate erected in a highway, is a common nusance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully intitled to; but where such a gate has continued time out of mind, it shall be intended, that it was set up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy. 1 *Haw.* 199.

Trees, hedges, ditches, drains.

2. No tree, bush, or shrub shall be permitted to stand or grow in any highway, within the distance of 15 feet from the centre thereof (except for ornament or shelter to the house, building, or court yard of the owner thereof); or hereafter be planted within the distance aforesaid: But

the ſame ſhall be cut down, grubbed up, and carried away, by the owner or occupier of the land or ſoil, within ten days after notice to him or his agent by the ſurveyor; on pain of 10s. 13 G. 3. c. 78. ſ. 6.

And the poſſeſſors of the land next adjoining ſhall cut, prune, or plaſh their hedges; and alſo cut down or prune and lop the trees growing in or near ſuch hedges or other fences (except thoſe trees planted for ornament or ſhelter as foreſaid), in ſuch manner, that the highway ſhall not be prejudiced by the ſhade thereof, and that the ſun and wind may not be excluded from ſuch highway to the damage thereof. And if ſuch poſſeſſor ſhall not, within ten days after notice (H) given by the ſurveyor, cut, prune, and plaſh ſuch hedges, and cut down or prune and lop ſuch trees; the ſurveyor may complain to a juſtice, who ſhall ſummon the poſſeſſor of the ſaid lands to appear before the juſtices at ſome ſpecial ſeſſions to anſwer to the ſaid complaint; and if it ſhall appear to the juſtices at ſuch ſpecial ſeſſions, that ſuch poſſeſſor hath not complied with the requiſites of this act, the ſaid juſtices, upon hearing the ſurveyor and the poſſeſſor of ſuch land or his agent (or, in default of appearance, on having due proof of the ſervice of ſuch ſummons) may order ſuch hedges to be cut, plaſhed, and pruned, and ſuch trees to be cut down or pruned, in ſuch manner as may beſt anſwer the purpoſes aforeſaid. And if the poſſeſſor of ſuch land ſhall not within ten days obey ſuch order on notice thereof; he ſhall forfeit 2s for every 24 feet in length of ſuch hedge which ſhall be neglected to be cut and plaſhed, and 2s for every tree which ſhall be neglected to be cut down, or pruned, and lopped; and the ſurveyor ſhall cauſe the ſame to be done, and the poſſeſſor ſhall pay, over and above the penalties, the charges and expences (I) of doing the ſame; to be levied by diſtreſs by warrant of one juſtice. ſ. 7.

And ditches, drains, or watercourſes, of a ſufficient depth and breadth for keeping the highways dry and conveying the water from the ſame, ſhall be made, ſcoured, cleanſed, and kept open, and ſufficient trunks, tunnels, plats, or bridges, ſhall be made and laid, where any cart ways, horſe ways, or foot ways, lead out of the ſaid highways into the lands adjoining thereto,—by the occupier of ſuch lands; and every perſon who ſhall occupy any lands adjoining to or near the highway, thro' which the water hath uſed to paſs from the ſaid highway, ſhall open, cleanſe, and ſcour the ditches, watercourſes, or drains, for ſuch water to paſs without obſtruction: And every

perſon

perſon making default in any of the matters aforeſaid, after ten days notice given by the ſurveyor, ſhall forfeit 10 s. ſ. 8.

Provided, that no perſon ſhall be compelled, or any ſurveyor permitted, to cut or prune any hedge at any other time, than between the laſt day of September and the laſt day of March; and that no perſon ſhall be obliged to fell any timber trees growing in hedges at any time whatſoever, except where the highways ſhall be ordered to be inlarged as herein after mentioned, or to cut down or grub up any oak trees growing in ſuch highway or in ſuch hedges, except in the months of April, May, or June, or any aſh, elm, or other trees, in any other months than December, January, February, or March. ſ. 13.

And where the ditches, gutters, or watercourſes, which have been uſually made, or which are herein directed to be made, cleanſed, and kept open, ſhall not be ſufficient to carry off the water which ſhall lie upon and annoy the highways; in ſuch caſe, it ſhall be lawful for the ſurveyor, by order of one juſtice (K) to make new ditches and drains in and thro' the lands adjoining or lying near to ſuch highways, or in and thro' any other lands, if it ſhall be neceſſary, for the more eaſy and effectual carrying off ſuch water from the ſaid highways, and alſo to keep ſuch ditches, gutters, or watercourſes ſcoured, cleanſed, and opened; and the ſurveyors and their workmen may go upon the ſaid lands for that purpoſe: Provided, that the ſaid ſurveyor make proper trunks, tunnels, plats, bridges, or arches, over ſuch ditches, gutters, or watercourſes, where the ſame ſhall be neceſſary, for the convenient uſe and enjoyment of the lands thro' which the ſame ſhall be made, and from time to time keep the ſame in repair; and do alſo make ſatisfaction to the owner or occupier of ſuch lands which are not waſte or common, for the damages which he ſhall ſuſtain thereby; to be ſettled and paid in ſuch manner as the damages for getting materials in ſeveral or incloſed grounds are herein directed to be ſettled and paid. ſ. 14.

Straw, dung, or other matter laid in the highway.

3. If any perſon ſhall lay in any highway any ſtone, timber, ſtraw, dung, or other matter; or in making, ſcouring, or cleanſing the ditches or watercourſes, ſhall permit the ſoil or earth dug out thereof, to remain in the highway, ſo as to obſtruct or prejudice the ſame, for 5 days after notice (H) by the ſurveyor; he ſhall forfeit 10 s. 13 G. 3. c. 78. ſ. 9.

And if any ſtone or timber, or any hay, ſtraw, ſtubble, or other matter, for the making of manure, or on any other pretence not tolerated by this act, ſhall be laid in any highway within 15 feet from the centre thereof; and ſhall not, within 5 days after notice given by the ſurveyor or ſome perſon aggrieved thereby, be removed; the owner or poſſeſſor of the lands adjacent, or any other perſon by order of a juſtice, may clear the ſaid highway, by removing the ſtone, timber, hay, ſtraw, dung, or other matter, and have the ſame to his own uſe. *ſ.* 10.

Incroaching on the highway.

4. If any perſon ſhall incroach by making or cauſing to be made any hedge, ditch, or other fence on any highway not being turnpike road, within the diſtance of 15 feet from the middle or centre thereof; or ſhall plow, harrow, or break up the ſoil of any land or ground, or in ploughing or harrowing the adjacent lands ſhall turn his plough in or upon any land or ground, within the diſtance of 15 feet from the middle or centre of any highway, where the breadth of ſuch highway is formed and marked or deſcribed with certainty, and doth not exceed in breadth 30 feet; he ſhall forfeit 40 s to him who ſhall make information thereof: And the ſurveyor may cauſe ſuch hedge, ditch, or fence to be taken down, or filled up, at the expence of the perſon to whom the ſame ſhall belong: And one juſtice, on proof to him made upon oath, may levy as well the expences of taking down ſuch hedges, as the ſaid penalty, by diſtreſs. 13 *G.* 3. *c.* 78. *ſ.* 63.

Surveyor to give notice, and cauſe defects to be amended.

5. The ſurveyor ſhall, at all ſuch times as he ſhall judge proper, view all the common highways, trunks, tunnels, plats, hedges, ditches, banks, bridges, cauſeways, and pavements; and if he ſhall obſerve any nuſances, incroachments, obſtructions, or annoyances, he ſhall give to any perſon doing or permitting the ſame perſonal notice, or notice in writing (H) to be left at his uſual place of abode, ſpecifying the particulars: And if ſuch nuſances, obſtructions, or annoyances ſhall not be removed; and the ditches drains, gutters, and watercourſes aforeſaid effectually made, ſcoured, cleanſed, and opened; and ſuch trunks, tunnels, plats, and bridges made and laid; and ſuch hedges properly cut and pruned,—within 20 days after ſuch notice, then the ſurveyor ſhall do the ſame, and the perſon neglecting ſhall forfeit for every foot in length one penny, and over and above the ſaid forfeiture the ſurveyor ſhall by ſuch perſon be reimburſed his charges and expences in doing the ſame; and if not paid on demand, the ſurveyor ſhall apply to a juſtice, and

on

on making oath before him of the notice being given as aforeſaid, and of the work being done, and of the expences attending the ſame, the ſurveyor ſhall be repaid by ſuch perſon all ſuch charges as ſhall be allowed to be reaſonable by the ſaid juſtice (l); and if not paid on demand, the ſame ſhall be levied as other penalties and forfeitures by this act. 13 *G.* 3. *c.* 78. *ſ.* 12.

Carriages or implements of huſbandry left in the highway.

6. If any perſon ſhall wilfully ſet or leave any waggon, cart, or other carriage, or any plough or inſtrument of huſbandry in any highway (except only with reſpect to ſuch waggon, cart, or carriage, during ſuch reaſonable time as the ſame ſhall be loading or unloading, and ſtanding as near the ſide of ſuch highway as conveniently may be) ſo as to interrupt or hinder the free paſſage of any other carriage, or of his majeſty's ſubjects; he ſhall forfeit 10 s. *ſ.* 11.

Divers of carriages miſbehaving.

7. By the 1 *G. ſt.* 2. *c.* 57. If any perſon driving any cart, dray, or waggon, in the ſtreets of *London*, ſhall ride upon the ſame, not having ſome other perſon on foot to guide the ſame; he ſhall on conviction before the alderman of the ward, or a juſtice of the peace, on oath of one witneſs, forfeit 10 s, by diſtreſs and ſale; half to the informer, and half to the poor; and in default of payment, to be ſent to the houſe of correction for three days. *ſ.* 8.

And by the 24 *G.* 2. *c.* 43. If any carter, drayman, carman, waggoner, or other driver ſhall ride upon the ſame in *London* or within ten miles thereof, not having ſome other perſon on foot to guide the ſame, he ſhall on the like conviction, forfeit 10 s in caſe ſuch driver ſhall not be the owner of ſuch carriage; and in caſe he be the owner, then any ſum not exceeding 20 s. To be recovered, levied, and applied, as by the aforeſaid act of the 1 *G. ſt.* 2. *c.* 57. And any perſon, though not a peace officer, may ſtop and apprehend ſuch offender, and carry him as ſoon as conveniently may be before a juſtice; and if any perſon ſhall reſiſt, abuſe, or prevent any perſon endeavouring to apprehend ſuch offender, or when he is apprehended, ſhall reſcue, or endeavour to reſcue him, he ſhall forfeit 20 s in like manner. *ſ.* 8, 9.

By the 30 *G.* 2. *c.* 22. If the driver of any carriage within *London* or *Weſtminſter*, or in any publick ſtreet or common highway within the bills, ſhall by negligence or wilful miſbehaviour, interrupt the free paſſage of his majeſty's ſubjects; he ſhall on conviction by confeſſion or oath of one witneſs, before one juſtice forfeit any ſum not exceeding 20 s, or be committed to the houſe of correction, or ſome other priſon of the place where the offence

fence ſhall have been committed, or the offender ſhall have been apprehended, to be kept to hard labour for any time not exceeding one calendar month. The ſaid forfeiture to be levied by diſtreſs by warrant of ſuch juſtice; and to be half to the proſecutor, and half to the overſeers for the uſe of the poor of the pariſh or place where the offence ſhall be committed, or the offender ſhall be apprehended; and if there be no overſeer, then to ſome other officer for the uſe of the poor as aforeſaid. *ſ.* 7, 12.

And any perſon who ſhall ſee any offence committed againſt this act, may by authority of this act and without any other warrant apprehend the offender, and ſhall with all convenient ſpeed convey or deliver him to a conſtable or other peace officer of the place where the offence ſhall be committed or the offender ſhall be apprehended, in order to be conveyed before a juſtice, there to be dealt with according to law. *ſ.* 13.

And if he ſhall refuſe to diſcover his name and place of abode, to the juſtice before whom he ſhall be brought; he ſhall be immediately delivered over to a conſtable or other peace officer, and ſhall by him be conveyed to the common gaol or houſe of correction of the place where the offence ſhall be committed, there to remain until he ſhall declare his name and place of abode to the ſaid juſtice, or to ſome other juſtice of ſuch place. *ſ.* 11.

And any perſon ſhall be admitted to be an evidence, notwithſtanding his being an inhabitant of the place where the offence ſhall be committed. *ſ.* 14.

Provided, that perſons puniſhed by this act ſhall not be puniſhed by any former law. *ſ.* 15.

And more generally, by the 13 *G.* 3. *c.* 78. Whereas many bad accidents happen, and great miſchiefs are frequently done upon the ſtreets and highways, by the negligence or wilful miſbehaviour of perſons driving carts thereon; it is enacted, That if the driver of any cart, car, dray, or waggon, ſhall ride upon any ſuch carriage in any ſtreet or highway, not having ſome other perſon on foot or on horſeback to guide the ſame (ſuch carriages as are conducted by ſome perſon holding the reins of the horſe or horſes drawing the ſame excepted); —— or if the driver of any carriage whatſoever, on any part of any ſtreet or highway, ſhall by negligence or wilful miſbehaviour cauſe any hurt or damage to any perſon or carriage paſſing or being upon ſuch ſtreet or highway; —— or ſhall quit the highway and go on the other ſide of the hedge or fence incloſing the ſame; —— or wilfully be at ſuch diſtance

tance from ſuch carriage, whilſt it ſhall be paſſing upon the highway, that he cannot have the direction and government of the horſes or cattle drawing the ſame;—— or ſhall, by negligence or wilful miſbehaviour, prevent, hinder, or interrupt the free paſſage of any other carriage, or of his majeſty's ſubjects, on the ſaid highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, ſhall refuſe or neglect to turn aſide and make way for any coach, chariot, chaiſe, loaded waggon, cart, or other loaded carriage;—or if any perſon ſhall drive, or act as the driver, of any ſuch coach, poſt chaiſe, or other carriage, let for hire, or waggon, wain, or cart, not having the owner's name (as by this act is directed) painted thereon, or ſhall refuſe to diſcover the true chriſtian and ſurname of the owner of ſuch reſpective carriage: he ſhall, on conviction by confeſſion, view of the juſtice, or oath of one witneſs, before one juſtice, forfeit any ſum not exceeding 10s, in caſe ſuch driver be not the owner of ſuch carriage, and if he be the owner, then any ſum not exceeding 20s; and in default of payment be committed to the houſe of correction for any time not exceeding one month, unleſs the ſame be ſooner paid. And every ſuch driver offending in either of the ſaid caſes, may by authority of this act, with or without any warrant, be apprehended by any perſon who ſhall ſee ſuch offence committed, and ſhall be immediately conveyed or delivered to a conſtable or other peace officer, to be conveyed before a juſtice, to be dealt with according to law. And if any driver, in any the caſes aforeſaid, ſhall refuſe to diſcover his name; the juſtice may commit him to the houſe of correction for any time not exceeding 3 months, or may proceed againſt him for the penalty by a deſcription of his perſon and the offence, and expreſſing in the proceedings that he refuſed to diſcover his name. *ſ.* 60.

And for the better diſcovering of offenders, the owner of every waggon, wain, or cart, and alſo of every coach, poſt chaiſe, or other carriage, let to hire, ſhall cauſe to be painted, upon ſome conſpicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all ſuch coaches, poſt chaiſes, or other carriages, before the ſame ſhall be uſed in any publick highway, his chriſtian and ſurname and place of abode, in large legible letters; and continue the ſame thereupon ſo long as ſuch carriage ſhall be uſed upon any highway: And the owner of every common ſtage waggon or cart ſhall, over and above his chriſtian and ſurname, cauſe to be painted on the part and in the manner aforeſaid, the following words, *common ſtage wag-*

waggon or *cart*, as the caſe may be. And every perſon uſing any ſuch carriage as aforeſaid upon any highway, without the ſaid names and deſcriptions reſpectively, or cauſing to be painted thereon any fictitious name or place of abode, ſhall forfeit not exceeding 5 l, nor leſs than 20 s. *ſ.* 59.

Alehouſes not to be near bridges.

8. And for preventing obſtructions near public bridges; if any perſon, collecting any tolls payable for paſſing over any public bridge with carriages or cattle of any kind, ſhall keep any victualling houſe, alehouſe, or other place of public entertainment; or ſhall ſell, or permit to be ſold therein, any wine, beer, ale, cyder, ſpirituous liquors, or other ſtrong liquors, by retail, — he ſhall, on conviction before one juſtice, by confeſſion, or oath of one witneſs, forfeit 5 l. 13 *G.* 3. *c.* 78. *ſ.* 62.

IX. Direction poſts, blocks, mile ſtones, water marks, and battlements of bridges.

The juſtices at a ſpecial ſeſſions, ſhall iſſue their precept (L) to the ſurveyor, where ſeveral highways meet, and there is no proper or ſufficient direction poſt or ſtone already fixed or erected, requiring him forthwith to cauſe to be erected or fixed, in the moſt convenient place where ſuch ways meet, a ſtone or poſt, with inſcriptions thereon, in large legible letters, painted on each ſide thereof, containing the name or names of the next market town or towns, or other conſiderable place or places to which the ſaid highways lead; and alſo at the ſeveral approaches or entrances to ſuch parts of any highways, as are ſubject to deep or dangerous floods, graduated ſtones or poſts, denoting the depth of water in the deepeſt part of the ſame, and likewiſe ſuch direction poſts or ſtones as the ſaid juſtices ſhall judge to be neceſſary for the guiding of travellers in the beſt and ſafeſt tract thro' the ſaid floods or waters: And if he ſhall refuſe or neglect, by the ſpace of 3 months, to cauſe ſuch ſtones or poſts to be fixed; he ſhall forfeit 20 s. 13 *C.* 3. *c.* 78. *ſ.* 26.

And whereas in ſome places it may be neceſſary, to ſecure horſe and foot cauſeways by poſts, blocks, or great ſtones fixed in the ground, or by banks of earth caſt up, or otherwiſe, from being broken up and ſpoiled with waggons, wains, carts, or carriages; and foraſmuch as divers evil diſpoſed perſons do wilfully or wantonly pull up, cut down, and remove or damage the ſaid poſts, blocks, and great ſtones, and drive carriages upon ſuch banks and cauſeways or againſt the ſides thereof, and alſo dig or caſt down the ſaid banks, whereby the cauſeways

or

or banks are often ruined and deſtroyed; —— and ſuch evil diſpoſed perſons do or may break, damage, or throw down the ſtones, bricks, or wood, fixed upon the parapets or battlements of bridges; — and pull down, deſtroy, obliterate, or deface any mile ſtone or poſt, graduated or direction poſt or ſtone, erected upon any highway: For prevention thereof, it is enacted, that every perſon who ſhall be guilty of any ſuch offence, ſhall upon conviction before one juſtice, by the oath of one witneſs, or upon view of the juſtice, forfeit not exceeding 5 l, nor leſs than 10 s; and in default of payment, ſhall be committed to the houſe of correction, there to be whipped and kept to hard labour for any time not exceeding one calendar month, nor leſs than 7 days. *ſ.* 52.

X. Breadth of wheels, and number of horſes.

Whereas the highways, not being turnpike roads, are much prejudiced by the narrowneſs of the wheels of the ſeveral carriages travelling thereon, and by the exceſſive burdens loaded in ſuch carriages; it is enacted, That no waggon, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall be drawn with more than 8 horſes; and no cart, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall be drawn with more than 5 horſes:

And no waggon, having the ſole or bottom of the fellies of the wheels of the breadth of 6 inches, and rolling on on each ſide a ſurface of 9 inches, ſhall be drawn with more than 7 horſes:

And no waggon, rolling a ſurface of 6 inches only, ſhall be drawn with more than 6 horſes; and no cart, having the ſole or bottom of the fellies of the wheels of the breadth of 6 inches, ſhall be drawn with more than 4 horſes:

And no waggon, having the ſole or bottom of the fellies of the wheels of leſs breadth than 6 inches, ſhall be drawn with more than 5 horſes; and no cart, having the ſole or bottom of the fellies of leſs breadth than 6 inches, ſhall be drawn with more than 3 horſes:

On pain that the owner ſhall forfeit 5 l, and the driver (not being the owner) 10 s, for every horſe or beaſt above the number reſpectively, to the ſole uſe of the informer. 13 *G.* 3. *c.* 78. *ſ.* 55.

But carriages moving upon wheels or rollers of the breadth of 16 inches on each ſide thereof, with flat ſurfaces, ſhall be allowed to be drawn with any number of horſes or other cattle. *Id.*

And

And provided, that no profecution ſhall be commenced before a juſtice, againſt ſuch owner or driver, unleſs the information be laid within three days; and no action ſhall be commenced unleſs within one kalendar month, after the offence committed; and neither information nor action ſhall be brought, unleſs notice be given by the informer to the driver, on the day whereon the offence ſhall be committed, of an intention to complain of ſuch offence: And if it ſhall appear to the juſtice before whom the complaint ſhall be made, that the offender lives ſo remote as to make it inconvenient to ſummon him to appear before ſuch juſtice, the ſaid juſtice may diſmiſs the complaint, and leave the informer to his remedy by action at law. *ſ.* 56.

And provided always, that the juſtices, at the Michaelmaſs quarter ſeſſions, may licenſe in ſuch manner and for ſuch time as they ſhall think fit, an increaſe of the number of horſes to be drawn in carriages up any ſteep hill, or on any road not turnpike, over and above the number herein before limited; and from time to time, at any Michaelmaſs quarter ſeſſions, may revoke, alter, or vary the ſame, as they ſhall think fit. *ſ.* 57.

And provided, that if it ſhall appear, upon the oaths of credible witneſſes, to the ſatisfaction of any juſtice of the peace, or of any court of juſtice authorized to inforce the execution of this act, that any waggon, cart, or carriage, could not, by reaſon of deep ſnow or ice, be drawn by the number of horſes or beaſts of draught hereby allowed; they may ſtop the proceedings before them for recovery of the forfeiture. *ſ.* 58.

Provided alſo, that nothing herein, concerning the number of horſes and wheels of carriages, ſhall extend to carts, waggons, or other carriages, employed only in carrying any one ſtone, block of marble, cable rope, or piece of metal, or piece of timber, or to ſuch ammunition or artillery as ſhall be for his majeſty's ſervice. *Id.*

And for all the purpoſes of this act, two oxen or horned cattle ſhall be conſidered as one horſe. *Id.*

With reſpect particularly to the cities of London and Weſtminſter and parts adjacent, it is enacted by the 6 *G. c.* 6. that no perſon in London and Weſtminſter, or within 10 miles thereof, ſhall carry at any one load, in waggons or carts having their wheels ſhod with iron, more than 12 ſacks of meal of 5 buſhels each, nor more than 12 quarters of malt, nor more than 700½ of bricks, nor more than one chaldron of coals; on pain of forfeiting any one of the horſes, with the geers, bridles, and halters therewith

with uſed, in ſuch manner and to ſuch uſes, as by the 5 *G. c.* 12. (now repealed.)

And by the 18 *G.* 2. *c.* 33. The wheels of every cart, car, or dray, within the bills of mortality, ſhall be ſix inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horſes, after they are up the hills from the water ſide; on pain of 40 s by warrant of one juſtice, by diſtreſs; and for want of diſtreſs, or non-payment in ſix days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that ſhall bring any goods, or ſhall carry any goods half a mile beyond the paved ſtreets of the ſaid cities and places.

Alſo any perſon, within the ſaid limits, uſing any cart, car, or dray, having the wheels full ſix inches broad, when worn, may have the ſame bound round with tire of iron, provided it be ſix inches broad, and made flat, and not ſet on with roſe-headed nails.

XI. Breadth, widening, changing, and diverting of highways.

By the common law, an ancient highway cannot be changed, without the king's licence firſt obtained upon a writ of *ad quod damnum* and an inquiſition thereon found, that ſuch a charge will not be prejudicial to the publick; and it is ſaid, that if one change a highway without ſuch authority, he may ſtop the new way whenever he pleaſes; and it ſeemeth that the king's ſubjects have not ſuch an intereſt in ſuch new way, as will make good a general juſtification of their going in it as a common highway, but that in an action of treſpaſs brought by the owner of the land, againſt thoſe who ſhall go over it, they ought to ſhew ſpecially, by way of excuſe, how the old way was obſtructed, and the new one ſet out; alſo it is ſaid, that the inhabitants are not bound to keep watch in ſuch a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw.* 201.

But by the 13 *G.* 3. *c.* 78. where any highway ſhall be incloſed after a writ of *ad quod damnum* iſſued, and inquiſition thereupon taken; any perſon that ſhall think himſelf injured by ſuch incloſure, may appeal to the next general quarter ſeſſions, if there be time for that purpoſe; if not, to the next ſeſſions after: And the determination of ſuch ſeſſions ſhall be final. *ſ.* 19.

[Note, the writ of *ad quod damnum* is an original writ, iſſuing out of and returnable into the chancery, directed to the ſheriff to inquire by a jury, whether ſuch charge

will be detrimental to the publick; which inquiſition, being a proceeding only *ex parte*, is in its own nature traverſable, and heretofore the party grieved might be heard againſt it before the chancellor: but now, by this act, juriſdiction is given to the juſtices in ſeſſions to hear and determine appeals concerning the ſame.]

Where a new road is made, in purſuance of ſuch writ and inquiſition thereupon found, after the perſon who ſued out the writ hath once made the ſaid road, the pariſhioners ought to keep it in repair for the future; becauſe, being diſcharged from the repairing of the old road, no new burden is laid upon them, but their labour is only transferred from one place to another. 3 *Atk.* 766.

But if the new road lies in another pariſh, then the perſon who ſued out the writ, and his heirs, ought not only to make it, but to keep it in repair; otherwiſe the pariſhioners of ſuch other pariſh would have a new charge upon them, and no recompence by the former road being taken away. *Id.* Venner and Lucy, Jan. 29, 1764.

Alſo, it is certain, that a highway may be changed by the act of God; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its courſe, and goes over different ground from that whereon it uſed to run, yet the highway continues in the new channel, in the ſame manner as in the old. 1 *Haw.* 202.

An highway incloſed by virtue of a ſpecial act of parliament (for dividing and incloſing common fields, common paſtures, or the like,) ſhall continue to be repaired by the pariſh or townſhip as it was before, unleſs otherwiſe directed by the act: For if he who incloſed the ground adjoining to the highway were in ſuch caſe obliged to repair, it might happen that his allotment of the common would not be worth the expence of repairing the way. *Burr. Manſf.* 461. K. and inhabitants of Flecknow. *H.* 30 G. 2.

In aid of the common law, and to render the changing of highways leſs troubleſome and expenſive, power is given by the 13 *G.* 3. *c.* 78. to the juſtices of the peace, to widen, divert, and change highways, as they ſhall judge moſt convenient.

In order to which, it is enacted, That the ſurveyor ſhall make every public cartway leading to any market town 20 feet wide at the leaſt, and every public horſe way or drift way 8 feet wide at the leaſt, if the ground between the fences incloſing the ſame will admit thereof. And where it ſhall appear, upon the view of two juſtices, that any highway between the fences thereof is not of

ſufficient breadth, and may be conveniently widened and inlarged; or that the ſame cannot be conveniently inlarged and made commodious for travellers, without diverting and turning the ſame: the ſaid juſtices ſhall order (M) ſuch highway reſpectively to be widened and inlarged, or diverted and turned, in ſuch manner as they ſhall think fit; ſo that the ſaid highway when inlarged and diverted ſhall not exceed 30 feet in breadth; and that neither of the ſaid powers do extend to pull down any houſe or building, or to take away the ground of any garden, park, paddock, court, or yard. *ſ.* 15, 16.

And for ſatisfaction of the perſon or perſons, bodies politic or corporate, who are ſeiſed or poſſeſſed of or intereſted, in their own right, or in truſt for any other, in the ground that ſhall be laid into the ſaid highway ſo to be inlarged, or thro' which the ſaid highway ſo to be diverted and turned ſhall go; the ſaid ſurveyor, under the direction and with the approbation of the ſaid juſtices, ſhall make an agreement with them for the recompence to be made for ſuch ground, and for the making ſuch new ditches and fences as ſhall be neceſſary, in proportion to their ſeveral intereſts; and alſo with any other perſon, body politic or corporate, that may be injured by the inlarging or diverting ſuch highways as aforeſaid. And if the ſaid ſurveyor cannot agree with them, or if they cannot be found, or ſhall refuſe to treat or to take ſuch recompence as ſhall be offered by the ſurveyor; then the juſtices, at any general quarter ſeſſions, upon certificate in writing (N) ſigned by the juſtices who made ſuch view, of their proceedings in the premiſſes, and on proof of 14 days notice in writing having been given by the ſurveyor to the owner, occupier, or other perſon or body corporate intereſted in ſuch ground, or to his or their guardian, truſtee, clerk, or agent, ſignifying an intention to apply to ſuch quarter ſeſſions for the purpoſes of taking ſuch ground, —— ſhall impanel a jury out of the perſons returned to ſerve at ſuch ſeſſions: And the ſaid jury ſhall upon their oaths, aſſeſs the damages to be given and recompence to be made to the owners and others intereſted in the ſaid grounds, as they ſhall think reaſonable, not exceeding 40 years purchaſe for the clear yearly value of the ground; and likewiſe ſuch recompence as they ſhall think reaſonable, for making new ditches and fences on the ſide or ſides of the ſaid highways that ſhall be ſo inlarged or diverted; and alſo ſatisfaction to any perſon or body corporate that may be otherwiſe injured by the inlarging or diverting the ſaid highways reſpectively. *ſ.* 16.

And if the jury ſhall give a verdict for more money than was offered by the ſurveyor before the application to the ſeſſions; the coſts attending the ſeveral proceedings ſhall be paid by the ſurveyor, out of the money in his hands or by him to be levied: But if the jury ſhall give a verdict for no more, or for leſs than was offered by the ſurveyor; then the coſts ſhall be paid by the perſon or body corporate, who refuſed to accept the ſatisfaction ſo offered to him as aforeſaid. *ſ.* 18.

And on payment or tender of the money ſo to be awarded, or leaving it in the hands of the clerk of the peace if the party intitled to receive it cannot be found or ſhall refuſe to accept it; the intereſt of ſuch perſon or body corporate in the ſaid ground ſhall be deveſted out of them, and the ſaid ground, after ſuch agreement or verdict as aforeſaid, ſhall be eſteemed and taken to be a public highway, to all intents and purpoſes. *ſ.* 16.

Saving nevertheleſs, to the owner of ſuch ground, all mines, minerals, and foſſils lying under the ſame, which may be got without breaking the ſurface; and alſo all timber and wood growing upon ſuch ground, to be cut down and taken by ſuch owner, within one month after ſuch order made; or in default thereof, to be cut down by the ſurveyor within the reſpective months aforeſaid, and laid upon the land adjoining for the benefit of the owner. *Id.*

And where there is not ſufficient money in the hands of the ſurveyor, the ſaid two juſtices in caſe of agreement, or the ſaid quarter ſeſſions after ſuch verdict as aforeſaid, ſhall order an equal aſſeſſment to be made and levied upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, in the pariſh, townſhip, or place where ſuch highway lies; and if not paid in ten days after demand, the ſame ſhall by order of the ſaid two juſtices or court of quarter ſeſſions reſpectively, be levied by the ſurveyor in the manner herein after mentioned. Provided, that no ſuch aſſeſſment to be made in any one year ſhall exceed 6 d in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments ſo aſſeſſed. *Id.*

And when any ſuch new highway ſhall be made as aforeſaid, the old way ſhall be ſtopped up, and the land and ſoil thereof ſhall be ſold by the ſurveyor, with the approbation of the ſaid juſtices (O), to ſome perſon whoſe lands adjoin thereto, if he ſhall be willing to purchaſe the ſame; if not, to ſome other perſon, for the full value thereof. But if ſuch old road ſhall lead to any

lands, houſe, or place, which cannot in the opinion of ſuch juſtices reſpectively be accommodated with a convenient way and paſſage from ſuch new highway; in ſuch caſe, the old highway ſhall only be ſold ſubject to the right of way and paſſage to ſuch lands, houſe, or place reſpectively. And the money ariſing by the ſale ſhall be applied towards the purchaſe of the land where ſuch new highway ſhall be made. And on payment or tender of the money, and on a certificate ſigned by the ſaid two juſtices, or by the chairman of the ſaid court of quarter ſeſſions reſpectively, deſcribing the lands ſo ſold, and expreſſing the ſum ſo agreed for, and directing to whom the ſame ſhall be paid; and on the purchaſer's taking a receipt for ſuch purchaſe money from the perſon intitled to receive the ſame, by an indorſement on the back of ſuch certificate, the ſoil of ſuch old highway ſhall become veſted in ſuch purchaſer and his heirs. But all mines, minerals, and foſſils, lying under the ſame, ſhall continue to be the property of the perſon who would have been intitled to the ſame, if ſuch old highway had continued there. ſ. 17.

And moreover, when it ſhall appear, upon the view of two juſtices (P) that any public highway, not in the ſituation herein before deſcribed, or public bridle way, or footway, may be diverted, ſo as to make the ſame nearer or more commodious to the public, and the owner of the lands thro' which ſuch new highway, bridle way, or footway, is propoſed to be made, ſhall conſent thereto by writing (Q) under his hand and ſeal; it ſhall be lawful, by order of the juſtices at ſome ſpecial ſeſſions, to divert and turn and to ſtop up ſuch footway, and to divert, turn, and ſtop up and incloſe, ſell and diſpoſe of ſuch old highway or bridle way, and to purchaſe the ground and ſoil for ſuch new highway, bridle way, or footway, by ſuch ways and means, and ſubject to ſuch exceptions and conditions in all reſpects, as herein before mentioned with regard to highways to be widened or diverted. And where any ſuch highway, bridle way, or foot way, herein laſt before deſcribed, ſhall be ſo ordered to be ſtopped up or incloſed, and ſuch new highway, bridle way, or foot way ſet out and appropriated in lieu thereof as aforeſaid; it ſhall be lawful for any perſon injured or aggrieved by any ſuch order or proceeding, or by the incloſure of any highway by virtue of an inquiſition taken upon a writ of *ad quod damnum*, to appeal to the next general quarter ſeſſions, on giving ten days notice in writing to the ſurveyor and party intereſted in ſuch in-

cloſure, if there be time for that purpoſe; if not, then to the next ſeſſions after. And if no ſuch appeal be made, or, being made, ſuch order and proceedings ſhall be confirmed, the new way ſhall be and continue a public highway, bridle way, or footway, to all intents and purpoſes, and the ſoil thereof ſold in the manner and ſubject to the reſtrictions herein before mentioned with reſpect to highways to be inlarged or diverted. But no incloſure or ſtoppage of ſuch old way ſhall be made, until the new way ſhall be compleated, and ſo certified by two juſtices upon view; which certificate ſhall be returned to the clerk of the peace, and by him inrolled amongſt the records. *ſ.* 19.

And where any highway, bridle way, or footway, hath been diverted and turned above 12 months, either from neceſſity, or where the ſame hath been deſtroyed by floods, or ſlips of the ground, or from other cauſes, if a new way hath been made in lieu thereof, nearer or more commodious to the public, and the ſame hath been acquieſced in, and no ſuit or proſecution hath been commenced for the diverting or turning the ſame; ſuch new way ſhall from henceforth be the public way to all intents and purpoſes whatſoever. *ſ.* 19.

Provided, that no *common* land, lying between the fences of any old highway to be ſtopped up or incloſed by virtue of this act, ſhall be incloſed. And where the ſame, not being common land, ſhall upon a medium exceed 30 feet in breadth, and not extend to 50 feet, the ſame ſhall not be ſtopped up or incloſed, until ſatisfaction be made to the owner for ſo much as ſhall exceed the breadth of 30 feet; and if the parties cannot agree, the ſame ſhall be adjuſted by the ſaid juſtices, or the jury, if a jury be impanelled: And if it ſhall exceed 50 feet in breadth; or if the old road be thro' the open field or ground belonging to any particular perſon; ſuch perſon, and alſo the perſon or perſons intitled to the land between the fences on the ſide of ſuch highway, ſhall reſpectively hold and enjoy the land and ſoil of ſuch old highway, and pay to the ſurveyor ſo much as ſhall be agreed on, or if they cannot agree, then ſo much as ſhall be adjudged by the ſaid juſtices or jury, if a jury be impanelled, to be adequate to the purchaſe, eſtimating ſuch highway at 30 feet in breadth upon an average. *ſ.* 20.

And where any footway ſhall be diverted thro' the land belonging to the ſame perſon who owned the land thro' which ſuch old footway lay, the ſame ſhall be deemed an exchange only; and no ſatisfaction ſhall be made, unleſs the

the land for the new footway be of greater length and of greater value, than the land uſed for the old footway. And where the footway ſhall not be turned thro' the lands belonging to the ſame perſon, the damage which had been occaſioned by the old footway to the lands thro' which it lay, if the parties intereſted ſhall not agree in adjuſting the ſame, ſhall be adjudged by two indifferent perſons, one to be named by the owner of the land, and the other by the ſaid two juſtices; and if the perſons ſo to be nominated cannot agree therein, they ſhall chuſe ſome third perſon to adjudge the ſame, whoſe determination ſhall be final. And the money at which ſuch damages ſhall be aſſeſſed, ſhall be applied in making ſatisfaction to the owner of the land, thro' which ſuch new footway ſhall be made. *ſ.* 21.

And if in any pariſh or place, where a highway ſhall be diverted and turned, it ſhall appear to the juſtices, that there are *other* highways within ſuch pariſh or place, beſides that ſo to be diverted and turned, which may without inconvenience to the public be diverted into ſuch new highway, or into any other within the ſame pariſh or place, and the charge of repairing the ſame may be thereby ſaved; the ſaid juſtices may order ſuch highway, which ſhall appear to them unneceſſary, to be ſtopped up, and the ſoil thereof ſold, in ſuch manner, and ſubject to ſuch reſtrictions, and ſuch right of appeal, as herein before directed concerning highways to be ſtopped up or incloſed. *ſ.* 22.

XII. Aſſeſſments how to be made.

Aſſeſſment for ſpecial purpoſes.

1. For reimburſing expences for purchaſing materials, and making ſatisfaction for damages in getting and carrying the ſame away; — erecting guide poſts, or other poſts or ſtones; — making and repairing trunks, tunnels, plats, bridges, and arches; — for damages done to lands by making new ditches and drains; — and for the ſalary to be paid by the pariſh, townſhip, or place to the ſurveyor: Upon application by the ſurveyor to the juſtices at a ſpecial ſeſſions, and oath made of the ſums he hath *bona fide* laid out, or which will be required for the purpoſes aforeſaid; the ſaid juſtices, or two of them, ſhall by their warrant cauſe an equal aſſeſſment to be made, upon all occupiers of lands, tenements, woods, tithes, and hereditaments; to be made and collected by ſuch perſon or perſons, and allowed in ſuch manner, as the ſaid juſtices by their order at ſuch ſeſſions ſhall appoint; and to be levied as is herein after directed. 13 *G.* 3. *c.* 78. *ſ.* 30.

Provided, that no ſuch aſſeſſment for thoſe or any of thoſe purpoſes, in any one year, ſhall exceed the rate of 6 d in the pound. *Id.*

General aſſeſſment.

2. If upon application of the ſurveyor to the juſtices at their general or quarter ſeſſions, or at a ſpecial ſeſſions for the highways, the ſaid juſtices ſhall be fully ſatisfied by proof upon oath, that the duty hath been performed, and the money applied according to the directions of this act; or ſhall be fully ſatisfied, that the common highways, bridges, cauſeways, ſtreets, or pavements, belonging to any pariſh, townſhip, or place, are ſo far out of order, that they cannot be ſufficiently amended and ſupported by the means herein before preſcribed (notice being firſt given (R) of ſuch intended application at the church or chapel on ſome Sunday preceding ſuch quarter or ſpecial ſeſſions; or, if the place be extraparochial, notice in writing being firſt given of ſuch intended application, to ſome of the principal inhabitants reſiding in ſuch extraparochial place, a week at leaſt before ſuch general or ſpecial ſeſſions); — in ſuch caſe, an equal aſſeſſment upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within any ſuch pariſh, townſhip, or place, for the ſaid purpoſes, may be made and collected by ſuch perſon, and allowed in ſuch manner, as the ſaid juſtices by their order (S) at ſuch general or ſpecial ſeſſions ſhall direct. 13 *G.* 3. *c.* 78. *ſ.* 45.

Provided, that the ſaid aſſeſſment, and the aſſeſſment herein before authorized for buying materials, making ſatisfaction for damages, erecting guide poſts, and paying the ſurveyor's ſalary, ſhall not together in any one year exceed the rate of 9 d in the pound. *ſ.* 46.

XIII. Penalty of hindring the execution.

If any perſon ſhall reſiſt or make forcible oppoſition againſt any perſon employed in the execution of this act; or make any reſcue of the goods diſtrained; or if any conſtable ſhall refuſe or neglect to execute or obey any warrant of a juſtice; he ſhall, on conviction before one juſtice, forfeit not exceeding 10 l, nor leſs than 40 s, to be paid to the ſurveyor for the repair of the highways: If not forthwith paid or ſecured to be paid upon conviction, the juſtice ſhall commit him to the common gaol or houſe of correction for any time not exceeding 3 months, unleſs the forfeiture be ſooner paid. 13 *G.* 3. *c.* 78. *ſ.* 71.

XIV.

XIV. Penalty of the ſurveyor for neglect of duty.

If any ſurveyor, after his acceptance of the office ſhall neglect his duty in any thing required of him, for which no particular penalty is impoſed; he ſhall forfeit not exceeding 5 l, nor leſs than 10 s, at the diſcretion of the juſtice or juſtices having juriſdiction therein. 13 *G.* 3. *c.* 78. *ſ.* 50.

XV. Surveyor's account.

The ſurveyor ſhall diligently collect the ſeveral aſſeſſments, forfeitures, penalties, ſums of money, and compoſitions, within the year for which he is appointed ſurveyor:

And ſhall keep a book, in which he ſhall enter a juſt and true account of all ſuch money as ſhall have come to his hands, or to the hands of the ſaid aſſiſtant, and to whom, and on what occaſion, he hath paid or applied the ſame:

And ſhall alſo enter in ſuch book a liſt of all ſuch ſums of money as ſhall then remain due and owing from any perſon or perſons, in reſpect of the payments, compoſitions, aſſeſſments, penalties, or forfeitures:

And alſo an account of all tools, materials, implements, and other things provided by order of the inhabitants, at a veſtry or other public meeting, for the repair of the highways, at the public expence of ſuch pariſh, townſhip, or place:

And ſhall produce the book and the aſſeſſments made in that year, to the inhabitants at a veſtry or other public meeting to be held for that purpoſe, within 15 days before the ſpecial ſeſſions to be holden in the week next after Michaelmaſs quarter ſeſſions; to the intent that the ſaid accounts, aſſeſſments, and liſts may be inſpected by the ſaid inhabitants:

And after the ſaid book and aſſeſſments ſhall have been produced at ſuch meeting, he ſhall take the ſame to a juſtice on ſuch day and at ſuch hour as ſhall be agreed upon at ſuch meeting before ſuch laſt mentioned ſpecial ſeſſions; and then and there verify ſuch account, or any part thereof, upon oath (T), if required:

And ſuch juſtice may allow ſuch account (U), if he finds it juſt, or poſtpone it until ſuch ſpecial ſeſſions, if he finds cauſe for ſo doing, in which caſe it may be ſettled and allowed at ſuch ſpecial ſeſſions, after the parts

objected to by ſuch juſtice ſhall have been explained and verified by proper evidence, to the ſatisfaction of the juſtices at ſuch ſpecial ſeſſions; and in caſe any articles contained in ſuch accounts ſhall not be explained and proved to the ſatisfaction of ſuch juſtices, they may diſallow the ſame:

And for the account examined and taken, and oath adminiſtred, the juſtices clerks ſhall have the ſum of 1s, and no more. 13 *G.* 3. *c.* 78. *ſ.* 48.

And when the ſaid accounts ſhall have been ſo ſettled and allowed, or diſallowed as aforeſaid; the ſaid book and aſſeſſments ſhall be tranſmitted to a churchwarden or overſeer of the poor of ſuch pariſh, townſhip, or place, or if the place be extraparochial, then to ſome principal inhabitant thereof; to be kept for the uſe of ſuch pariſh, townſhip, or place: And the ſaid ſurveyor ſhall alſo forthwith deliver a duplicate of ſuch book and account, together with all ſums of money that ſhall remain in his hands, and likewiſe all tools, materials, implements, and other things as aforeſaid to the ſucceeding ſurveyor, if any ſhall be appointed; or retain the ſame in his hands, and account for them in his next account, if he ſhall be continued ſurveyor in the ſucceeding year. *Id.*

And the ſucceeding ſurveyor may recover, collect, and receive all ſums of money due and owing as aforeſaid, as the preceding ſurveyor could or ought to have done. *Id.*

And if ſuch ſurveyor ſhall neglect to provide ſuch book, or to enter ſuch accounts and liſts therein; or to deliver the ſaid book and ſuch duplicate thereof, and ſuch aſſeſſments, tools, materials, implements, and other things, in manner aforeſaid; he ſhall forfeit not exceeding 5 l, nor leſs than 40 s. And if he ſhall make default in paying or accounting for the money remaining in his hands, within the time, and according to the directions aforeſaid; he ſhall forfeit double the money which ſhall be adjudged by the ſaid juſtices to be in his hands. *Id.*

If the ſurveyor ſhall die, before ſuch accounts and liſt be made out; or ſuch money, book, aſſeſſments, tools, materials, and implements ſhall be ſo delivered and paid; his executors or adminiſtrators ſhall make out, pay, and deliver the ſame, in like manner, and under the like penalty, as the ſurveyor was liable and ſubject to. *Id.*

XVI. Preſentment or indictment of highways in general. (V.)

1. All defects of repairs of highways ſhall be preſented in the county where they lie, and not elſewhere. Indictment to be within the county.

If a pariſh lies in two diſtinct counties, an indictment may be brought againſt that part of the pariſh in which the ruinous road lies. And it is ſaid, that this is the only proper method. For an indictment againſt the whole pariſh, found in one of the counties, cannot be inforced; for one county hath no juriſdiction over the inhabitants of a diſtinct county. *Bur. Manſf.* 2507.

2. And the indictment muſt ſhew, that the way is common to all the king's people; for which cauſe it hath been reſolved, that an indictment for a nuſance to a horſeway, without adding that it is a highway, is naught. 1 *Haw.* 220. Muſt ſhew it to be a highway.

But it is not neceſſary to ſay it is a highway for this or that particular carriage; for if it is a common highway, it is a highway for all manner of things. *Caſes in the time of lord Hardwicke.* 316.

3. It is ſafeſt in the indictment to ſhew both the place from which, and alſo the place to which the way ſuppoſed to be out of repair doth lead; yet exceptions for want of ſuch certainty have ſometimes been diſallowed: However it ſeems certain, that there is no neceſſity to ſhew that a highway leads to a market town, becauſe every highway leads from town to town. 1 *Haw.* 219. Muſt ſhew the places from and to which it leads.

4. It is neceſſary in the indictment expreſsly to ſhew, in what place the nuſance complained of was done; for which cauſe an indictment for ſtopping a way at *D*, leading from *D* to *C*, is not good, for it is impoſſible that a way leading from *D* ſhould be in *D*, and no other place is mentioned. 1 *Haw.* 219. Place where.

5. It is ſaid, that a preſentment that a highway in ſuch a place is decayed, by the defaults of the inhabitants of ſuch a town, is good, without naming any perſon in certainty. 1 *Haw.* 220. Need not name the inhabitants.

6. But it hath been adjudged, that an indictment againſt particular perſons muſt ſpecially charge them every one. 1 *Haw.* 220. Indictment againſt particular perſons.

7. It ought alſo certainly to ſhew, to what part of the highway the nuſance did extend, as by ſhewing how many foot in breadth it contained, or otherwiſe the defendant will neither know the certainty of the charge, againſt which Muſt ſet forth how much is out of repair.

which he is to make his defence, neither will the court be able from the record to judge of the greatneſs of the offence, in order to aſſeſs a fine anſwerable thereunto; and it hath been reſolved, that the place is not ſufficiently aſcertained by ſhewing, that it contained ſo many foot in length, and ſo many in breadth, by *eſtimation*. 1 Haw. 220.

Muſt ſet forth the fact clearly.

8. Alſo, the fact muſt be expreſſed in ſuch proper terms, that it may clearly appear to the court to have been a nuſance; and for this cauſe it hath been reſolved, that a preſentment for *diverting* a highway is not good, becauſe a highway cannot be diverted, but muſt always continue in the ſame place where it was, howſoever it may be *obſtructed*, and a new way made in another place. 1 *Haw.* 220.

Perſons indicted to have notice.

9. It ſeems to be implied in the conſtruction of all penal ſtatutes, that no one ought to be convicted of any offence againſt them without having notice of the accuſation made againſt him, and an opportunity of defending himſelf. And therefore it ſeems certain, that generally no one ought to be puniſhed for any of the abovementioned offences, without being called upon to anſwer for himſelf, and having liberty to traverſe the matters alledged againſt him. 1 *Haw.* 219.

Plea.

10. Upon an indictment againſt a pariſh for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be againſt a particular perſon, he may give evidence that others ought to repair it. 1 *Mod.* 112. *Comb.* 396.

And the defendants ought not to plead that they ought not to repair, without ſhewing who ought. 1 *Haw.* 220.

And Mr. *Hawkins* ſays, that if a particular perſon be bound to repair a highway, either by incloſure or by preſcription, the pariſh cannot take advantage of it upon the plea of not guilty, but ought to ſet forth their diſcharge in a ſpecial plea. 1 *Haw.* 203.

And it is no excuſe for the inhabitants of a pariſh, being indicted at common lay, for not repairing the highways, that they have done all that is required of them by ſtatute; for ſince theſe ſtatutes are wholly in the affirmative, and made in aid of the common law, and to ſupply the defects thereof, they ſhall not be conſtrued to abrogate any proviſion thereby made for theſe purpoſes. 1 *Haw.* 204. So that at all events, the pariſh may be compelled to make their ways good.

11. Af-

11. After conviction, or upon a demurrer, or confeſſion, any one may take exceptions to ſuch indictment or preſentment in any court for the want of legal form; but the court in diſcretion will very rarely ſuffer a man to take ſuch exceptions, before ſuch conviction or confeſſion, without a certificate and affidavit that the ways are in good repair. 1 *Haw.* 219. Exceptions.

12. And the defendants ſhall not be diſcharged by ſubmitting to a fine, but a *diſtringas* ſhall go *in infinitum* till they repair. 1 *Haw.* 220. Fine.

13. If the inhabitants of any pariſh, townſhip, or place, ſhall agree at a veſtry or other public meeting, to proſecute any perſon by indictment for not repairing any highway within ſuch pariſh, townſhip, or place, which they apprehend ſuch perſon was obliged to by law, or for committing any nuſance upon any highway; or ſhall agree at ſuch veſtry meeting to defend any indictment or preſentment againſt them; the ſurveyor may charge in his account the reaſonable expences thereof, after the ſame ſhall have been agreed to by ſuch inhabitants at a veſtry or public meeting, or allowed by a juſtice within the limit where ſuch highway ſhall be. 13 *G.* 3. *c.* 78. *ſ.* 65. Inhabitants at meeting may agree to proſecute an indictment.

14. And in all caſes where a veſtry or other public meeting of the inhabitants of any pariſh, townſhip, or place, is directed by this act; public notice ſhall be given of the day, hour, and place of holding the ſame, at the church or chapel on the Sunday next before; and alſo notice thereof in writing (W), ſpecifying the purpoſe of ſuch meeting, ſhall be fixed at the ſame time upon the door of ſuch church or chapel: and the ſame ſhall not be held till 3 days at leaſt after ſuch notice given. And if there be no church or chapel, the like notice ſhall be given in writing, and put up at the moſt public place therein, 3 days at leaſt before ſuch meeting. 13 *G.* 3. *c.* 78. *ſ.* 66. Meetings for the like purpoſes how to be aſcertained.

15. The court before whom any indictment or preſentment ſhall be tried for not repairing highways, may award coſts to the proſecutor, to be paid by the perſon indicted or preſented, if it ſhall appear that the defence was frivolous; or coſts to the perſon indicted or preſented, to be paid by the proſecutor, if it ſhall appear that the proſecution was vexatious. 13 *G.* 3. *c.* 78. *ſ.* 64. Coſts on an indictment.

XVII. Preſentment by a juſtice.

Every juſtice of aſſize, juſtices of the counties palatine of Cheſter, Lancaſter, and Durham, and of the Great ſeſſions

ſeſſions in Wales, ſhall have authority upon their own view, and every juſtice of the peace either upon his own view or upon information on oath given to him by the ſurveyor, to make preſentment (X) at their reſpective aſſizes or Great ſeſſions, or in the open general quarter ſeſſions of the peace, of any highway, cauſeway, or bridge, not well and ſufficiently repaired and amended, or of any other default or offence committed and done contrary to the proviſion and intent of this ſtatute:

And all defects in the repair thereof ſhall be preſented in the juriſdiction where the ſame do lie, and not elſewhere:

And every ſuch preſentment ſhall be as effectual, as if found by the oaths of twelve men:

Saving to every perſon affected by ſuch preſentment his lawful traverſe to the ſame, as well with reſpect to the fact of non-repair, as to the duty or obligation of repairing the ſaid highways, as they might have had upon any indictment of the ſame preſented and found by a grand jury:

And the juſtices at their general quarter ſeſſions, or the major part of them, may, if they ſee juſt cauſe, direct the proſecution on ſuch preſentment as ſhall be made at the quarter ſeſſions, to be carried on at the general expence of ſuch limit, and to be paid out of the general rates within the ſame:

And for every ſuch default ſo preſented, the juſtices of aſſize, counties palatine, and great ſeſſions, and juſtices of the peace, at their reſpective courts, may aſſeſs ſuch fines as they ſhall think meet:

And no ſuch preſentment, nor any *indictment* for any ſuch default or offence, ſhall be removed by certiorari or otherwiſe, out of ſuch juriſdiction, till the ſame be traverſed and judgment thereupon given; except where the duty or obligation of repairing may come in queſtion. 13 *G.* 3. *c.* 78. *ſ.* 24.

XVIII. Levying of aſſeſſments, fines, and forfeitures.

Levying of aſſeſſments.

1. If any perſon ſhall refuſe or neglect to pay the ſum aſſeſſed upon him by any aſſeſſment in purſuance of this act, within ten days after demand thereof made; the ſame ſhall be levied by the ſurveyor or any other perſon, by warrant of one juſtice by diſtreſs (Y); and in default of diſtreſs, the juſtice may commit him (g.) to the common gaol, there to remain until he ſhall have paid the ſum ſo aſſeſſed, and the coſts and charges occaſioned by ſuch neglect or refuſal. 13 *G.* 3. *c.* 78. *ſ.* 67.

And

And the ſurveyor may in all caſes be a witneſs, notwithſtanding his ſalary may ariſe in part from the forfeitures and penalties. *ſ.* 68.

2. No fine, iſſue, penalty, or forfeiture, for not repairing highways, or not appearing to any indictment or preſentment for not repairing the ſame, ſhall be returned into the exchequer or other court, but ſhall be levied by and paid to ſuch perſon or perſons, reſiding in or near the pariſh, townſhip or place where the road ſhall lie, as the court impoſing the ſame ſhall order, to be applied towards the repair of the highways. And the perſon or perſons ſo ordered to receive ſuch fine, ſhall apply, and account for the ſame, according to the direction of ſuch court, or in default thereof ſhall forfeit double the ſum received. 13 *G.* 3. *c.* 78. *ſ.* 47. Fines.

And if any fine, iſſue, penalty, or forfeiture, for not repairing the highways, or not appearing as aforeſaid, ſhall be levied on one or more of the inhabitants; ſuch inhabitant may make his complaint to the ſpecial ſeſſions; and the juſtices there ſhall by their warrant cauſe a rate to be made, according to the form and manner herein before preſcribed for reimburſing ſuch inhabitant. Which rate ſo made, and confirmed by two juſtices, ſhall be collected and levied by the ſurveyor; who ſhall within one month after making and confirming the rate, collect, levy, and pay to ſuch inhabitant the money ſo levied as aforeſaid. *Id.*

T. 20 *G.* 3. *K.* & *Townſhend.* The pariſh of *Kingsley* in *Staffordſhire* conſiſts of two diſtricts or townſhips, *viz.* *Kingsley* and *Wiſton.* An indictment had been preferred againſt the pariſh in general, for not repairing the highway running thro' it; to which there was the plea of not guilty, and the pariſh was convicted, and a fine impoſed. This fine was levied on one *Morris*, an inhabitant of the townſhip of *Wiſton*; but it was now ſworn in the court of king's bench, on the part of the inhabitants of that townſhip, that they had no notice of the indictment, the defence being made only by the other diſtrict, and that part of the road which was out of repair, lay intirely in that other diſtrict. Theſe facts were contradicted (tho' not very directly) by the affidavits on the other ſide. *Morris* having applied to the juſtices in their ſpecial ſeſſions, a warrant was there made for a rate (to reimburſe him), on the inhabitants of the townſhip of *Kingsley*; which rate was made and confirmed by two juſtices according to the ſtatute: And it having been moved for a mandamus to the ſurveyor of that townſhip, to collect and levy it on the in-

inhabitants thereof, and a rule made to ſhew cauſe; now, on ſhewing cauſe, in ſupport of the rule, affidavits were produced that the inhabitants of each of the two diſtricts are bound, by preſcription, to repair only ſuch part of the highway as is ſituate in their reſpective diſtricts. Againſt the rule, it was argued, that as the indictment and conviction were of the whole pariſh, the rate was void; for that the juſtices were only authorized by the act to direct the rate to be made on the pariſh, townſhip, or place preſented or indicted. If the townſhip of *Wiſton* was intitled to the exemption, they ought to have appeared and pleaded ſpecially to the indictment. *Willes* & *Aſhurſt*, juſtices, (lord *Mansfield* being abſent.) were of opinion, that they were not ſo tied down by the words of the ſtatute, but that they might conſtrue it agreeably to the juſtice of the caſe: That as it was ſworn directly on the part of *Wiſton* townſhip (and not expreſsly denied on the other ſide) that they had no notice of the indictment, and that the inhabitants of *Kingsley* townſhip alone had taken the defence upon them, it ought to be conſidered as being ſubſtantially an indictment merely againſt *Kingsley*. *Buller* juſtice concurred; but though the mandamus muſt be a ſpecial writ, ſuggeſting that the part of the highway, which was the ſubject of the indictment, law wholly in *Kingsley* townſhip, and that the two townſhips were ſeparately bound to repair their reſpective parts of the highway, in order to give the inhabitants of *Kingsley* an opportunity to traverſe, by the return, either of thoſe facts. To this the other two judges aſſented. And the rule was made abſolute for a mandamus. *Douglas*. 405.

Forfeitures.

3. All penalties and forfeitures by this act impoſed for any offence againſt the ſame, and all coſts and charges to be allowed and ordered by the authority of this act (the manner of levying and recovering whereof is not hereby otherwiſe particularly directed) ſhall be levied by diſtreſs, by warrant of one juſtice, where the offence, neglect, or default ſhall happen, or ſuch order for payment of coſts or charges ſhall be made (a. b. c. d. e.) which warrant ſuch juſtice ſhall grant, on conviction of the offender by confeſſion, or the oath of one witneſs, or upon order made as aforeſaid. And the penalty, when levied, ſhall be paid half to the informer, and half to the ſurveyor, for the repair of the highways, unleſs otherwiſe directed by this act. But if the ſurveyor ſhall be the informer, then the whole ſhall be employed towards the repair of the highway. And if ſuch diſtreſs cannot be found (f.), and ſuch penalties and forfeitures, or the ſaid coſts

coſts and charges, ſhall not be forthwith paid; the juſtice ſhall commit him (g.) to the common gaol or houſe of correction, for any time not exceeding 3 months, unleſs the penalty, forfeiture, coſts, and charges be ſooner paid. 13 *G.* 3. *c.* 78. *ſ.* 72.

And if the offender live out of the juriſdiction of the ſaid juſtice, any juſtice of the limit where ſuch perſon ſhall inhabit, on requeſt to him made, and on a true copy of the conviction and of the order for payment of ſuch coſts and charges being produced and proved before him by one witneſs upon oath, ſhall by his warrant cauſe the penalty or forfeiture mentioned in ſuch conviction, and the coſts and charges mentioned in ſuch order, or ſo much thereof as ſhall not have been paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be had, ſhall commit him to the common gaol or houſe of correction of ſuch limit, for the time and in the manner aforeſaid. *Id.*

Provided, that no warrant of diſtreſs, unleſs otherwiſe directed by this act, ſhall be iſſued for the levying any penalty or forfeiture, coſts or charges, until ſix days after the offender ſhall have been convicted, and an order made and ſerved upon him for payment thereof. *ſ.* 73.

Provided alſo, that the proſecutor or informer may, at his election, ſue for and recover any forfeiture or penalty impoſed by this act, which ſhall amount to 40 s or upwards (if the recovery thereof be not otherwiſe particularly directed by this act) either in the manner herein before directed, or by action of debt in any of his majeſty's courts of record, in which it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of ——— being forfeited by an act paſſed in the 13th year of the reign of his preſent majeſty, intituled, "An act to explain, amend, and reduce into one act of parliament, the ſtatutes now in being for the amendment and preſervation of the public highways within that part of Great Britain called England, and for other purpoſes;" and the plaintiff, if he recovers, ſhall have double coſts. *ſ.* 74.

Provided, that there ſhall be no more than one recovery for the ſame offence; and that ten days notice in writing be given to the party offending previous to the commencement of ſuch action; and that the ſame be brought within one calendar month after the offence committed. *ſ.* 75.

And no conviction ſhall be had, unleſs upon confeſſion or oath of one witneſs, or view of the juſtice. *ſ.* 76.

And

And any inhabitant, where the offence ſhall be committed, may be a witneſs, notwithſtanding his being an inhabitant of ſuch pariſh, townſhip, or place. *Id.*

And any juſtice may adminiſter an oath to any witneſs or other perſon, for the better diſcovery and execution of the ſeveral matters or things herein directed to be inquired into and performed. *ſ.* 77.

Irregularity in the proceedings.

4. Where any diſtreſs ſhall be made for any ſum to be levied by virtue of this act, the diſtreſs ſhall not be deemed unlawful, nor the party making the ſame be deemed a treſpaſſer, on account of any default or want of form in the proceedings; nor ſhall the party diſtraining be deemed a treſpaſſer *ab initio* on account of any irregularity which ſhall be afterwards done by the party diſtraining, but the perſon aggrieved by ſuch irregularity may recover full ſatisfaction for the ſpecial damage in an action on the caſe. 13 *G.* 3. *c.* 78. *ſ.* 78.

And no perſon ſhall recover in any action for any irregularity, treſpaſs, or wrongful proceedings, if tender of ſufficient amends ſhall be made before the action brought; and if no tender hath been made, the defendant, by leave, may pay into court ſuch ſum as he ſhall ſee fit, whereupon ſuch proceedings ſhall be had as in other actions where the defendant is allowed to pay money into court. *ſ.* 79.

And no proceedings on this act ſhall be quaſhed for want of form, or removed by certiorari or any other proceſs into any of his majeſty's courts of record at Weſtminſter. *ſ.* 80.

XIX. Appeal.

If any perſon ſhall think himſelf aggrieved by any thing done by any juſtice or other perſon in the execution of this act, and for which no particular method of relief is herein otherwiſe appointed, he may appeal to the general quarter ſeſſions, giving notice in writing (h.) of his intention to bring ſuch appeal, and of the matter thereof, to the juſtice or other perſon againſt whom the complaint ſhall be made, within ſix days after the cauſe of ſuch complaint ſhall ariſe; and within 4 days after ſuch notice, entering into recognizance before a juſtice, with one ſufficient ſurety, conditioned to try ſuch appeal at, and abide the order of, and pay ſuch coſts as ſhall be awarded by the juſtices at ſuch quarter ſeſſions. 13 *G.* 3. *c.* 78. *ſ.* 80.

And

And ſuch juſtice and other perſon, having received ſuch notice, ſhall return all proceedings had before them, touching the matter of ſuch appeal, to the ſaid general quarter ſeſſions; on pain of 5 l. *Id.*

And the juſtices at ſuch ſeſſions, on proof of ſuch notice given, and of the entring into ſuch recognizance, ſhall determine the appeal in a ſummary way, and award coſts to either party, to be levied and recovered as herein before directed. *Id.*

Provided, that no appeal ſhall be made againſt any conviction for a penalty or forfeiture, unleſs the perſon convicted ſhall at the time of ſuch conviction if he be then preſent, if not, within ſix days after, give notice of his intention to appeal, and at the ſame time enter into recognizance with ſufficient ſureties to pay ſuch penalty or forfeiture, in caſe the conviction be affirmed upon the appeal: And on his giving ſuch ſecurity, the further proceeding for ſuch penalty or forfeiture ſhall be ſuſpended until the appeal be heard and determined. *Id.*

XX. Limitation of actions.

If any action ſhall be commenced for any thing done in the execution of this act, the ſame ſhall be brought within three months, and within the county where the fact was committed, and the defendant may plead the general iſſue; and if he prevails in the action, he ſhall have treble coſts. 13 *G.* 3. *c.* 78. *ſ.* 81.

Highways, turnpike.

II. Concerning turnpike roads in particular.

I. General qualification of truſtees.
II. Officers in general.
III. Meetings.
IV. Payment of ſubſcriptions inforced.
V. Stamp duties with reſpect to turnpike roads.

VI. Weighing engines to be erected, with additional toll for over-weight.
VII. Breadth and tire of wheels.
VIII. Number of horſes or beaſts of draught.
IX. Penalty of evading the tolls.
X. Toll for cattle going to or from water or paſture.
XI. Carriages to be marked.
XII. Driver miſbehaving.
XIII. Power of the general highway acts transferred to turnpike roads.
XIV. Statute duty and other labour on turnpike roads.
XV. Annoyances to be removed.
XVI. Demoliſhing gates or doing other damages.
XVII. Side gates.
XVIII. Farming the tolls.
XIX. Mortgagee to account.
XX. Power of leſſening the tolls.
XXI. Penalty of obſtructing the execution hereof.
XXII. Levying and application of forfeitures.
XXIII. Irregularity in the proceedings.
XXIV. Appeal.
XXV. Limitation of actions.

I. General qualification of truſtees.

IN many of the acts for repairing turnpike roads, there is a clauſe aſcertaining the quantity of eſtate which a man ſhall be poſſeſſed of, in order to intitle him to act as a truſtee in the execution of ſuch act: And by the 13 *G.* 3. *c.* 84. Where no ſuch qualification is directed by any ſuch particular act, it is generally provided, that in ſuch caſe, no perſon ſhall be capable of acting as a truſtee in the execution of any ſuch act, unleſs he ſhall be in his own right or in the right of his wife, in the actual poſſeſſion or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of 40*l*; or poſſeſſed of or intitled to a perſonal eſtate to the value of 800*l*; or heir apparent of

a perſon poſſeſſed of an eſtate in land of the clear yearly value of 80 l; and unleſs, before he acts (not being ſuch heir apparent) he take and ſubſcribe the following oath before two truſtees: "*I* A. B. *do ſwear that I truly and* bona fide *am in my own right* [or, *in the right of my wife*] *in the actual poſſeſſion and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of forty pounds*; [or, *poſſeſſed of, or intitled to, a perſonal eſtate of the value of eight hundred pounds*, as the caſe may be:] *So help me God.*" And if he ſhall act contrary hereto, he ſhall forfeit 50 l to him who ſhall ſue: And the proof of the qualification ſhall lie on the perſon proſecuted. *ſ.* 44.

II. Officers in general.

Officers not to be alehouſe keepers.

1. No perſon keeping a victualling houſe, alehouſe, or other houſe of public entertainment, or who ſhall ſell any wine, cyder, beer, ale, ſpirituous or other ſtrong liquors, by retail, ſhall be capable of acting as truſtee, or of holding any place of truſt or profit under the truſtees, or of collecting the toll; but no ſuch perſon ſhall be precluded from farming ſuch tolls, provided he employs a perſon to collect them who ſhall not be under ſuch incapacity. 13 *G.* 3. *c.* 84. *ſ.* 46.

Treaſurer and ſurveyor to give bond.

2. Every treaſurer and ſurveyor ſhall, within one month after his appointment, give bond (without ſtamp) to the truſtees, with a ſufficient ſurety, in ſuch penalty as the truſtees at a meeting ſhall direct, duly to pay and account for all ſuch money which ſhall be then in his hands, or which he ſhall afterwards receive as treaſurer or ſurveyor. 13 *G.* 3. *c.* 84. *ſ.* 65.

Gatekeepers.

3. No gatekeeper, or perſon renting the tolls, and reſiding in the toll houſe, ſhall be removable by any order of two juſtices as to his ſettlement, unleſs he ſhall be actually chargeable; nor ſhall he gain a ſettlement by ſuch renting and reſidence in the pariſh or place where the toll houſe is ſituate: And no tolls or toll houſe ſhall be aſſeſſed towards the poor rate, or any other public or parochial levy. 13 *G.* 3. *c.* 84. *ſ.* 56.

And if any gatekeeper ſhall ſuffer any waggon, wain, cart, or other carriage to paſs through the gate, or to be drawn or paſs within his view or with his knowledge, with any greater number of horſes or beaſts of draught; or with any carriage conſtructed or drawn in any other manner, or without ſuch names and deſcriptions painted thereon, as are in this act directed; and ſhall not within

one week proceed for the recovery of the forfeitures; he ſhall forfeit 40 s. *ſ.* 57.

And the gatekeeper, and alſo the ſurveyor, ſhall, when required by notice in writing from the truſtees or any five of them, render upon oath, to be adminiſtred by a truſtee, an account in writing of all money received by them on account of the road, and not before accounted for; on pain of 5 l, to be recovered in a ſummary manner before one juſtice, and applied to the uſe of the road. *ſ.* 55.

Upon the death of a gatekeeper, two truſtees may appoint another till the next meeting. *ſ.* 54.

And if the wife or family of a gatekeeper who ſhall die, ſhall refuſe to deliver up poſſeſſion within four days after another ſhall be appointed; or if a gatekeeper ſhall be diſcharged from his office, and ſhall refuſe to deliver up poſſeſſion within two days after notice given to him of his diſcharge; one juſtice may by his warrant order the conſtable, with ſuch aſſiſtance as ſhall be neceſſary, to enter the houſe and premiſſes in the day time, and remove the perſons who ſhall be found therein, together with their goods, out of ſuch houſe, and put the new appointed officer in poſſeſſion. *Id.*

Officers to account.

4. All clerks, treaſurers, ſurveyors, and other officers, and their reſpective executors and adminiſtrators, ſhall within ten days after notice in writing given to them by the truſtees, or five of them, at a meeting, produce and deliver up all books, accounts, papers, or writings, relative to the execution of their offices; on pain of 20 l. 13 *G.* 3. *c.* 84. *ſ.* 45.

General penalty on officers not doing their duty.

5. Every conſtable refuſing or neglecting to put this act in execution, or to account for and deliver any forfeiture or penalty; and every ſurveyor, toll taker, and all perſons employed by the truſtees, who receive ſalaries,—— that ſhall neglect, for the ſpace of one week after an offence committed, to lay ſuch information on oath before a juſtice as by this act is directed; ſhall forfeit 10 l. 13 *G.* 3 *c.* 84. *ſ.* 73.

III. Meetings.

Meetings how to be ſuſtained.

1. By the 13 *G.* 3. *c.* 84. Where a ſufficient number of truſtees ſhall not meet on the day appointed; ſo many of them as do meet, or if none ſhall be preſent, the clerk ſhall cauſe ten days notice in writing to be affixed on all the toll gates erected on the ſaid road; or if none ſhall be then erected, in the moſt conſpicuous place in one of the principal towns neareſt to which the roads lie (and in

ſuch caſe alſo in ſome public news paper circulated in that country); appointing the truſtees to meet at ſuch place where the preceding meeting was appointed to have been held. *ſ.* 49.

And by the 18 *G.* 3. *c.* 63. Where the truſtees ſhall not meet on the day appointed for their firſt meeting, or on any day appointed by adjournment, or ſhall not adjourn, or when the day appointed for the firſt meeting hath elapſed before the paſſing of the act; any five or more of them may cauſe notice under their hands to be affixed on all the turnpike gates on the ſaid road, or if none ſhall be then erected, they may cauſe the like notice to be affixed in ſome conſpicuous place in one of the market towns near the road, and alſo to be publiſhed in ſome news paper circulated in that part of the country, at leaſt twenty days before, appointing the truſtees to meet at the place where the laſt preceding meeting was appointed to have been held, or at the place directed for the firſt meeting, if no preceding meeting hath been held. *ſ.* 1.

And no meeting ſhall be adjourned for longer time than three calendar months. 13 *G.* 3. *c.* 84. *ſ.* 50.

Hours of buſineſs.

2. And no buſineſs ſhall be proceeded on at a meeting, before the hour of ten in the forenoon; and no adjournment ſhall be made to any hour later than two in the afternoon of the day on which ſuch meeting ſhall be appointed to be held. 13 *G.* 3. *c.* 84. *ſ.* 50.

Orders to be ſigned.

3. And every act agreed upon at any meeting ſhall be ſigned at the ſaid meeting by a competent number of truſtees; otherwiſe the ſame ſhall be void. 13 *G.* 3. *c.* 84. *ſ.* 50.

IV. Payment of ſubſcriptions inforced.

If any perſon ſhall agree to advance any ſum for making or repairing any turnpike road, and ſhall ſubſcribe his name to any writing for that purpoſe; he ſhall be liable to pay the ſame accordingly: and in default of payment within 21 days after the ſame ſhall become payable according to the purport of ſuch writing, and ſhall be demanded by the perſon to whom the ſame is made payable by ſuch writing, or if no perſon be named therein, then by the treaſurer of the turnpike; ſuch treaſurer or other perſon may ſue for and recover the ſame. 13 *G.* 3. *c.* 84. *ſ.* 35.

V. Stamp duties with reſpect to turnpike roads.

For the encouragement of the ſtamp duties, it is enacted by the 23 *G.* 3. *c.* 58. That all ſuch parts of any act of

parliament relative to any turnpike road, paſſed before Dec. 5, 1782, as exempt any mortgage, aſſignment, transfer, or other ſecurity for borrowing money, or any nomination, contract, bond, warrant, judgment, or other writing liable to ſtamp duties, from being ſtamped, ſhall be and are repealed. *ſ.* 15.

VI. Weighing engines to be erected, with additional toll for over-weight.

Weighing engines to be erected.

1. The truſtees, or five of them, at a meeting, may, if they think proper, at any toll gate, or in any part of the road, cauſe a crane, machine, or engine to be erected, for the weighing of carts, waggons, or carriages, conveying any goods or merchandiſe whatſoever; and by writing ſigned by them may cauſe ſuch carriage to be weighed, together with the loading thereof. (i.) 13 *G.* 3. *c.* 84. *ſ.* 1.

Additional toll for over-weight.

2. And may take, over and above the other tolls, an additional toll for every hundred weight, of 112 lb to the hundred, which every ſuch carriage with the loading thereof ſhall weigh, over and above the weights hereby allowed to each of them reſpectively, *viz.*

To every waggon or four wheel carriage, having the fellies or rollers of the wheels of the breadth of 16 inches; 8 tons in ſummer, and 7 in winter:

To every waggon or wain having the axle trees thereof of ſuch different lengths, that the diſtance from wheel to wheel of the nearer pair of the ſaid wheels be not more than 4 feet 2 inches, to be meaſured at the ground; and that the diſtance from wheel to wheel of the other pair thereof be ſuch, that the fore and hind wheels ſhall roll only one ſingle ſurface or path of 16 inches wide at the leaſt, on each ſide of the ſaid waggon or wain, and having the fellies thereof of the breadth of 9 inches from ſide to ſide at the bottom; 6 tons 10 hundred in ſummer, and 6 tons in winter:

To every waggon or 4 wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches; 6 tons in ſummer, and 5 tons 10 hundred in winter:

To every cart, having the fellies of 9 inches; 3 tons in ſummer, and 2 tons 15 hundred in winter:

To every waggon having the ſole or bottom of the fellies of the wheels of the breadth of 6 inches; 4 tons 5 hundred in ſummer, and 3 tons 15 hundred in winter:

To

To every ſuch waggon ſo conſtructed as to roll a ſurface of 11 inches; 5 tons ten hundred in ſummer, and 5 tons in winter:

To every cart having the fellies of the wheels of the ſame dimenſions; 2 tons twelve hundred in ſummer, and 2 tons ſeven hundred in winter:

To every waggon having the ſole or bottom of the fellies of the wheels of leſs breadth than 6 inches; 3 tons ten hundred in ſummer, and 3 tons in winter:

And to every cart having the fellies of the wheels of the ſame dimenſions; 1 ton 10 hundred in ſummer, and 1 ton 7 hundred in winter:

And for the ſeveral purpoſes aforeſaid, it ſhall be deemed ſummer from May 1, to Oct. 31; and winter from Nov. 1, to April 30; both incluſive. 13 *G.* 3. *c.* 84. *ſ.* 1.

Which ſaid additional toll ſhall be as follows; *viz.*

For the firſt and ſecond hundred of ſuch over-weight, the ſum of 3 d for each hundred:

For every hundred above two hundred, and not exceeding five hundred, the ſum of 6 d:

For every hundred above five hundred weight, and not exceeding ten hundred, the ſum of 2 s 6 d:

For every hundred above ten hundred weight, and not exceeding fifteen hundred, the ſum of 5 s:

For every hundred above fifteen hundred, the ſum of 20 s.

Provided, that the truſtees of the ſeveral turnpike roads within ten miles of London, Weſtminſter, and Southwark, may lower theſe additional tolls as they ſhall think fit. 14 *G.* 3. *c.* 82.

Toll taker to weigh.

3. The toll gate keeper or other perſon appointed to the care of the weighing engine ſhall weigh all ſuch waggons and carts as he ſhall have reaſon to believe carry greater weights than are allowed to paſs without paying the additional toll: And if he ſhall permit ſuch waggon or cart to paſs through any ſuch toll gate with greater weights than are hereby allowed, without weighing the ſame and receiving the additional tolls; he ſhall forfeit 5 l. 13 *G.* 3. *c.* 84. *ſ.* 2.

And in order to detect any connivance or neglect of duty in the perſon ſo appointed to weigh the carriages, any truſtee, creditor, clerk, treaſurer, or ſurveyor of ſuch turnpike road, may cauſe any carriage which ſhall have paſſed thro' the gate and not gone above 300 yards further to return and be weighed, paying to the driver the ſum of 1 s; which ſum ſhall be returned by the driver, if the

carriage and loading be above the weight hereby allowed, ſ. 3.

And if the driver refuſe to return, he ſhall forfeit 40s; and any other perſon, being then preſent, may drive back ſuch carriage in order to be weighed. ſ. 4.

And the ſurveyor ſhall make convenient places for turning ſuch carriages within 300 yards of the gate, on each ſide thereof, if the ground will admit of it. *Id.*

List of names to be put up at the weighing engine.

4. And there ſhall be a liſt of the names of all the truſtees and creditors, and alſo of the clerk, treaſurer, and ſurveyor of ſuch turnpike road, put up in the houſe or building where ſuch weighing engine ſhall be placed, to be inſpected by the owner or driver of every ſuch carriage. 13 G. 3. c. 84. ſ. 4.

Acts continued to defray the expence of the engines.

5. In order to compenſate for the expences of erecting ſuch weighing engine, and to prevent any prejudice thereby to the creditors; all acts of parliament made for repairing turnpike roads, the truſtees whereof ſhall within 12 months after the commencement of this act have cauſed ſuch engine to be erected, ſhall be continued further for five years from the time of the expiration thereof. 13 G. 3. c. 84. ſ. 5.

Exemptions from weighing.

6. Provided, that the aforeſaid regulations of weight ſhall not extend to any waggon, cart, or carriage, employed only in huſbandry, or carrying only manure for land, hay, ſtraw, fodder, or corn unthraſhed. 13 G. 3. c. 84. ſ. 6. Nor ſhall ſuch carriages be weighed (except hay or ſtraw carried for ſale). 14 G. 3. c. 82.

And by the 18 G. 3. c. 63. no toll or duty ſhall be taken by virtue of any act for repairing any public road, for any horſes belonging to officers or ſoldiers upon their march or upon duty, or for any horſes, cattle, or carriages, employed in carrying the arms or baggage of any ſuch officers or ſoldiers, or in carrying any ſick, wounded, or diſabled officers or ſoldiers: and no carriages ſo employed ſhall be ſubject to be weighed at any engine erected upon any turnpike road, nor the owner or driver liable to any forfeiture for over-weight. ſ. 2.

The ſeſſions may cauſe engines to be erected.

7. And the juſtices in ſeſſions, on complaint to them made, by any juſtice or two creditors or truſtees, may cauſe ſuch engines to be erected, and the expences thereof to be paid out of the tolls. 13 G. 3. c. 84. ſ. 7.

Engine where two roads meet.

8. Where two or more roads meet at or near the ſame place, the truſtees of ſuch roads reſpectively, at a meeting for that purpoſe, may fix upon ſome convenient place to erect a weighing engine upon, which will accommodate all ſuch roads; and proportion the expences, and the money

money arising from forfeitures for over-weight, in such manner as they shall judge reasonable. 13 G. 3. c. 84. ſ. 8.

9. The trustees shall cause to be put up and continued upon every toll gate, a table of all the tolls payable at every such gate, distinguishing each toll, and the different sorts of carriages for which they are to be paid; and also a table of the weights allowed for each carriage, with the loading thereof in summer and winter. 13 G. 3. c. 84. ſ 66. Table of the tolls to be put at the gate.

VII. Breadth and tire of wheels.

1. Whereas by several acts of parliament for particular turnpike roads, several high tolls are granted for waggons, carts, and other carriages, drawn by more than a certain number of horses or beasts of draught, with intent, in effect, to prohibit the passage of such carriages, and thereby the better to preserve the roads; it is enacted, that the trustees of such road, or any five of them, at the first meeting after the commencement of this act, shall mitigate and reduce the same high tolls, in respect of such waggons or other wheel carriages only, having the wheels of the breadth of 6 inches, in such manner, as no greater toll in respect to *waggons* be taken for the same, than is directed by the said acts respectively to be taken for waggons and other four wheeled carriages drawn by 4 horses or beasts of draught; and that no greater toll be taken for *carts* having the fellies of their wheels of the breadth of 6 inches, than is directed by such acts to be taken for carts drawn by 3 horses. 13 G. 3. c. 84. ſ. 22. Diminution of tolls in respect of broad wheels.

2. The turnpike trustees, or persons authorized by them, shall take for every waggon, wain, cart, or carriage, having the fellies of the wheels of less breadth than 6 inches from side to side, at the bottom or sole thereof, and for the horses or beasts of draught drawing the same, one half more than the tolls payable for the same respectively. 13 G. 3. c. 84. ſ. 23. 18 G. 3. c. 28. Increase of toll in respect of narrow wheels.

And whereas there are in several turnpike acts, exemptions allowed from payment of tolls in particular cases, and liberties allowed in particular cases, to pay less than are charged upon other waggons, carts, or carriages, passing through turnpike gates; and whereas it will tend to the advantage and preservation of turnpike roads, to confine such exemptions and liberties to carriages with wheels of the breadth of 6 inches or upwards; it is enacted, that no person shall, by virtue of the said acts, have

have any benefit or advantage of any exemption from toll or part of toll, or to pay leſs in reſpect of any waggon, cart, or other carriage, or horſe drawing the ſame, and carrying any particular kind of goods, than other carriages of the like nature carrying other goods ought to pay, unleſs ſuch waggon, cart, or other carriage have the ſole or bottom of the fellies of the wheels of the breadth of 6 inches or upwards: Except carts and carriages carrying corn in the ſtraw, hay, ſtraw, fodder, dung, lime for the improvement of land, or other manure, or any implements of huſbandry. *ſ.* 24.

Exemptions in reſpect of flat wheels.

3. Provided, that no perſon ſhall have the benefit of any ſuch exemption, or any privilege of compounding for tolls, in reſpect of any carriage having the fellies of the wheels of the breadth of 6 inches or upwards, unleſs the fellies, and the tire upon ſuch fellies ſhall lie ſo flat, as not to deviate more than one inch from a flat ſurface. 13 *G.* 3. *c.* 84. *ſ.* 9, 25. 16 *G.* 3. *c.* 39.

Provided alſo, that all waggons, carts, or carriages, moving upon rollers, of the breadth of 16 inches on each ſide thereof, with flat ſurfaces, ſhall paſs on any turnpike road toll free for (five years from Michaelmas 1774, 14 *G.* 3. *c.* 82.) and afterwards, paying only ſo much toll as ſhall not exceed half of the full toll payable for carriages having the fellies of the wheels of the breadth of 6 inches from ſide to ſide, and not rolling a ſurface of 16 inches on each ſide thereof: And that no more than half toll ſhall be paid in reſpect of waggons having the fellies of the wheels of the breadth of 9 inches, and rolling a ſurface of 16 inches on each ſide thereof, from and after the commencement of this act. *ſ.* 26.

General exceptions.

4. Provided always, that nothing herein contained ſhall extend to any chaiſe marine, coach, landau, berlin, chariot, chaiſe, chair, calaſh, or hearſe; or to the carriage of ſuch ammunition or artillery as ſhall be for his majeſty's ſervice; or to any cart or carriage drawn by one horſe or two oxen and no more; or to any carriage having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, which ſhall be laden with one block of ſtone, one piece of marble, one cable rope, one piece of metal, or one piece of timber. 13 *G.* 3. *c.* 84. *ſ.* 27.

And no toll ſhall be paid at any turnpike gate, in reſpect of carriages ſolely employed in carrying materials for the repair of any turnpike road or public highway, or for going to or returning from ſuch employment. *ſ.* 60.

VIII. Num-

VIII. Number of horſes or beaſts of draught.

1. No waggon or other four wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall paſs on any turnpike road with more than 8 horſes; nor any cart or other two wheeled carriage, having wheels of the breadth aforeſaid, ſhall paſs on any turnpike road with more than 5 horſes: And the horſes in ſuch reſpective carriages ſhall draw in pairs (except an odd horſe in any team, and except where the number of horſes ſhall not exceed four): Number of horſes.

And no waggon or other four wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of ſix inches, ſhall paſs on any turnpike road with more than ſix horſes; nor any cart or other two wheeled carriage, having wheels of the like breadth, ſhall paſs on any turnpike road with more than 4 horſes:

And no waggon or other four wheeled carriage, having the fellies of the wheels of leſs breadth than 6 inches, ſhall paſs on any turnpike road with more than 4 horſes; nor any cart or other two wheeled carriage, having the fellies of the wheels of leſs breadth than 6 inches, ſhall paſs on any turnpike road with more than 3 horſes:

On pain that the owner of every ſuch carriage ſhall forfeit 5 l, and the driver (not being the owner) 20 s, to any perſon who ſhall ſue for the ſame. 13 *G.* 3. *c.* 84. *ſ.* 13.

And for all the purpoſes of this act, two oxen or neat cattle ſhall be conſidered as one horſe. *ſ.* 67.

Provided, that no proſecution ſhall be commenced before a juſtice by way of *information*, for any forfeiture incurred by the owner or driver of any carriage having a greater number of horſes therein than are allowed by this act, unleſs ſuch information be laid within 3 days after the offence committed; and that no *action* ſhall be commenced, unleſs within one calendar month after the offence committed; and that neither ſuch information nor action ſhall be brought, unleſs notice be given by the informer to the driver on the day on which the offence ſhall be committed, of an intention to complain of ſuch offence. And if it ſhall appear to the juſtice before whom ſuch complaint ſhall be made, that the offender lives ſo remote as to make it inconvenient to ſummon him; the juſtice may diſmiſs the complaint, and leave the informer to his remedy by action at law. *ſ.* 15.

And

And provided, that any waggon, cart, or other carriage may be drawn with any number of horſes, upon any turnpike road where a weighing engine ſhall be erected, provided the carriage be weighed at ſuch engine: And in caſe of a proſecution, the perſon having care of the engine ſhall on demand give the driver a ticket, certifying that ſuch carriage was weighed, and the weight thereof, with the loading. *ſ.* 16.

Exception of drawing up ſteep hills.

2. If it ſhall appear to the truſtees of any turnpike road, or any 7 of them, at a meeting, by the oath of one witneſs experienced in levelling, that any part of the riſe of an hill upon ſuch road ſhall be more than 4 inches in a yard; they may allow (k.) ſuch number of horſes as they ſhall judge neceſſary, not exceeding 10 for waggons with 9 inch wheels, nor 6 for carts with 9 inch wheels; and not exceeding 7 for waggons with 6 inch wheels, nor 5 for carts with 6 inch wheels; and not exceeding 5 for waggons with wheels of leſs breadth than 6 inches, nor 4 for carts with wheels of leſs breadth than 6 inches:

And in caſe it ſhall appear that the whole riſe of any hill taken together ſhall be more than 4 inches in a yard upon an average, they may allow ſuch number of horſes as they ſhall think fit, for the purpoſe only of drawing up ſuch hill; the length and extent of ſuch hill to be ſpecified in ſuch order of allowance, and the termination at each end thereof to be marked by a poſt or ſtone; and the ſaid order of allowance to be certified (l.) to the next ſeſſions, who on proof upon oath may confirm or diſallow the ſame; and the juſtices at any ſubſequent ſeſſions may reconſider and diſcharge the ſame if they think fit. 13 *G.* 3. *c.* 84. *ſ.* 18.

Exception of ice or ſnow.

3. And if it ſhall appear, upon the oaths of credible witneſſes, to the ſatisfaction of any juſtice or court authorized to inforce the execution of this act, that any carriage could not, by reaſon of deep ſnow or ice be drawn with the reſpective weights, and by the number of horſes or beaſts of draught hereby allowed; they may ſtop all proceedings before them for the recovery of any penalty or forfeiture for drawing with a greater number of horſes or beaſts of draught than are hereby allowed. 13 *G.* 3. *c.* 84. *ſ.* 19.

Narrow wheeled carriages not to be drawn by horſes in pairs.

4. Whereas great damage is done to turnpike roads by waggons and other carriages with narrow wheels drawn by horſes in pairs; it ſhall not be lawful, for any waggon, wain, or cart, having the ſole or bottom of the fellies of the wheels thereof of leſs breadth than 9 inches, to paſs upon any turnpike road, if the ſame ſhall be drawn by

by horſes in pairs: Except ſuch, having the fellies of the breadth of ſix inches, as ſhall be authorized to be drawn in any other manner by order of the truſtees at a meeting conſiſting of 7 or more; and except carriages drawn by two horſes only. 13 *G.* 3. *c.* 84. *ſ.* 20.

Apprehending offenders.

5. And if any perſon ſhall drive with more than the number of horſes hereby allowed; the conſtable, ſurveyor, or any other perſon, may apprehend and carry him before a juſtice, and upon conviction by confeſſion or oath of one witneſs, he ſhall forfeit not exceeding 5 l, nor leſs than 10 s. 13 *G.* 3. *c.* 84. *ſ.* 21.

Exception as to Wales.

6. The juſtices in Wales, at their Michaelmaſs quarter ſeſſions yearly, may licenſe an increaſe of the number of horſes in drawing carriages on any turnpike road, over and above the number herein before limited, if upon inquiry they find any additional number neceſſary; and may alter, vary, or revoke the ſame as they ſhall think fit. 13 *G.* 3. *c.* 84. *ſ.* 59.

IX. Penalty of evading the tolls.

Unloading goods.

1. If any perſon ſhall unload any goods before they come to the turnpike gate or engine; or ſhall lay upon ſuch carriage, after it ſhall have paſſed the gate or engine, any goods taken from any horſe, cart, or other carriage, belonging to, or hired or borrowed by the ſame waggoner or driver, in order to avoid the payment of the reſpective additional tolls:

Or if any perſon ſhall ſo unload, in order to carry conſiderable quantities of goods thro' any turnpike gate in one and the ſame day; and thereby pay leſs toll at ſuch gate, than would have been paid if ſuch goods had not been ſo unloaden:

He ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit 5 l, to be levied upon the goods of the owner; and the driver, not being the owner, ſo offending, and being convicted thereof as aforeſaid, ſhall be committed to the houſe of correction for the ſpace of one month. 13 *G.* 3. *c.* 84. *ſ.* 10.

Turning out of the road.

2. If the owner or driver ſhall turn out of the road, in order to avoid weighing or paying the toll, and ſhall afterwards return and proceed upon the road; he ſhall, on conviction before one juſtice, by the oath of one witneſs, forfeit, if he be the owner, not exceeding 5 l, nor leſs than 20 s; if he be the driver, and not the owner, any ſum not exceeding 50 s, nor leſs than 10 s. 13 *G.* 3. *c.* 84. *ſ.* 11.

3. If

Taking out horſes.

3. If any perſon ſhall take off any horſe or other beaſt of draught from any waggon or other carriage, or cauſe the diſtance of the wheels to be altered before the ſame ſhall come to the gate, with intention to avoid the toll or any forfeiture or penalty; he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit 5 l. 13 G. 3. c. 84. ſ. 17.

Taking the benefit of exemptions fraudulently.

4. If any perſon ſhall take the benefit of any exemptions fraudulently; he ſhall forfeit not exceeding 5 l, nor leſs than 40 s. 13 G. 3. c. 84. ſ. 28.

X. Toll for cattle going to or from water or paſture.

By the 17 G. 3. c. 16. Whereas an exemption from toll by ſeveral particular turnpike acts hath been granted for cattle going to and from water and paſture, and many diſputes have ariſen how far that exemption extended; it is enacted, that in all caſes where any exemption from toll for cattle going to and from water or paſture is or ſhall be given by any turnpike act, ſuch exemption ſhall only extend to ſuch cattle as ſhall be driven to and from water or paſture from one pariſh to the next adjoining pariſh, or to ſuch cattle as ſhall not paſs upon any ſuch turnpike road more than for the ſpace of two miles in going to or returning from water or paſture.

XI. Carriages to be marked.

For the better diſcovery of offenders, the owner of every waggon, wain, or cart, and alſo of every coach, poſt chaiſe, or other carriage, let to hire, ſhall cauſe to be painted upon ſome conſpicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all ſuch coaches, poſt chaiſes, or other carriages, before the ſame ſhall be uſed on any turnpike road, his chriſtian, and ſurname, and place of abode, in large legible letters, and continue the ſame thereupon. And the owner of every common ſtage waggon or cart, employed in travelling ſtages from town to town, ſhall, over and above his chriſtian and ſurname, cauſe to be painted on the part, and in the manner aforeſaid, the following words COMMON STAGE WAGGON (or CART, as the caſe ſhall be). And every perſon uſing any ſuch carriage upon any turnpike road, without the names and deſcriptions painted thereon reſpectively, or who ſhall paint or cauſe to be painted on ſuch

ſuch carriage any fictitious name or place of abode, ſhall forfeit for every offence not exceeding 5 l, nor leſs than 20 s. 13 *G.* 3. *c.* 84. *ſ.* 68.

And if any perſon ſhall, upon any turnpike road, *drive* any waggon, wain, cart, or carriage, not being marked as aforeſaid; the conſtable, ſurveyor, or any other perſon, may apprehend and carry him before a juſtice, and on conviction by confeſſion or oath of one witneſs, he ſhall forfeit not exceeding 5 l, nor leſs than 10 s. *ſ.* 21.

XII. Driver miſbehaving.

If the driver of any cart, carriage, dray, or waggon ſhall ride upon the ſame in any ſtreet or highway, not having ſome other perſon on foot or on horſeback to guide the ſame (ſuch carriages as are conducted by ſome perſon holding the reins of the horſe or horſes drawing the ſame excepted); —— or if the driver of any carriage, on any part of any ſtreet or highway, ſhall by negligence or wilful miſbehaviour, cauſe any hurt or damage to any perſon or carriage paſſing or being upon ſuch ſtreet or highway; —— or ſhall quit the highway, and go to the other ſide of the hedge or fence incloſing the ſame; —— or wilfully be at ſuch diſtance from ſuch carriage, or in ſuch ſituation, that he cannot have the direction and government of the horſes or cattle drawing the ſame; —— or ſhall, by negligence or wilful miſbehaviour prevent or hinder the free paſſage of any other carriage or of his majeſty's ſubjects; —— or if the driver of any empty or unloaded waggon, cart, or other carriage, ſhall refuſe or neglect to turn aſide and make way for any coach, chariot, chaiſe, loaded waggon, cart, or other loaded carriage; —— or if any perſon ſhall drive, or act as the driver of any ſuch coach, poſt chaiſe, or other carriage let for hire, or waggon, wain, or cart not having the owner's name, as hereby required, painted thereon, or ſhall refuſe to diſcover the true chriſtian and ſurname of the owner of ſuch reſpective carriage: he ſhall, on conviction before one juſtice, by confeſſion, or view of the juſtice, or oath of one witneſs, forfeit any ſum not exceeding 10 s, in caſe the driver ſhall not be the owner of ſuch carriage; and if the offender be the owner, then any ſum not exceeding 20 s; and in default of payment, ſhall be committed to the houſe of correction for any time not exceeding one month, unleſs ſuch forfeiture ſhall be ſooner paid. And every ſuch driver may, without any warrant, be apprehended

hended by any perſon who ſhall ſee ſuch offence committed, and ſhall be immediately conveyed to a conſtable or other peace officer, in order to be carried before a juſtice. And if ſuch driver ſhall refuſe to diſcover his name, the juſtice ſhall commit him to the houſe of correction for any time not exceeding 3 months; or may proceed againſt him for the penalty by a deſcription of his perſon and offence, and expreſſing in the proceedings that he refuſed to diſcover his name. 13 *G.* 3. *c.* 84. *ſ.* 40.

XIII. Powers of the general highway acts transferred in aid of turnpike roads.

Where the powers given by ſeveral turnpike acts are ineffectual for providing materials for the uſe of the turnpike roads therein deſcribed; and alſo for enlarging, diverting, and turning ſuch turnpike roads; and ſtopping up, and ſelling of the old roads; and alſo for making, opening, and cleanſing of ditches and drains, and the cutting and pruning of hedges and trees; and alſo for calling forth the ſtatute duty which ſhall belong to ſuch turnpike roads: the ſurveyor of every turnpike road, may, with the approbation of the truſtees, put in execution the ſeveral powers more amply given for the like purpoſes in the general highway act or acts, as fully and amply as the ſurveyors of the ſeveral pariſhes or townſhips can or may do, by virtue of ſuch general highway act or acts. 13 *G.* 3. *c.* 84. *ſ.* 70.

XIV. Statute duty and other labour on turnpike roads.

Statute duty to be performed within the diſtrict.

1. The turnpike ſurveyor ſhall cauſe the ſtatute duty required by the ſeveral turnpike acts, and compoſitions ariſing from the ſame, to be expended upon the turnpike road lying within the pariſh, townſhip, or place, from which ſuch duty ſhall be required, and not elſewhere; on pain of 40 s. 13 *G.* 3. *c.* 84. *ſ.* 32.

Getting materials.

2. No turnpike ſurveyor ſhall gather or cauſe to be gathered any looſe ſtones for the uſe of the road, upon the common fields or incloſed lands of any perſon, without the conſent of the occupier, or a licence from a juſtice, after having ſummoned ſuch occupier to come before him, and heard his reaſons, if he ſhall appear, and give any, for refuſing his conſent. 13 *G.* 3. *c.* 84. *ſ.* 61.

And where any materials ſhall be got by the ſurveyor in the ſeveral or incloſed grounds of any perſon for the uſe

uſe of any turnpike road, under the authority of this act or of the ſaid general highway act or acts; ſatisfaction ſhall be made by the truſtees of ſuch turnpike road to the owner or occupier of ſuch grounds for the materials ſo to be got, and alſo for the damages in carrying the ſame away, in ſuch manner as ſatisfaction is to be made by the ſaid general highway act or acts. *ſ.* 71.

And on every turnpike road, where a ſufficient quantity of ſtone, gravel, chalk, or other materials cannot be provided and carried by the labourers and teams required to perform ſtatute duty upon the ſame; the ſurveyor, with the approbation of the truſtees, ſhall contract for the getting and carrying thereof, at ſome time and place to be fixed for that purpoſe, of which ten days notice (m.) in writing ſhall be given, by fixing the ſame on the door of the church or chapel, or if there be no church or chapel, then at the moſt public place there, which notice ſhall ſpecify the work to be done, and the time and place for letting thereof: And if any ſurveyor ſhall have any ſhare in the contract, or in any other contract for work or materials, or ſhall let to hire any team, or ſell or diſpoſe of any timber, ſtone, or other materials, unleſs a licence in writing for the ſale of ſuch materials, or for letting to hire ſuch team, be firſt obtained from the truſtees; he ſhall forfeit 10 l, and be incapacitated to be employed as ſurveyor. *ſ.* 36.

Proportioning the ſtatute duty between ſeveral turnpike roads.

3. Where there are two or more turnpike roads under ſeveral acts of parliament, within the ſame pariſh, townſhip, or place, and the ſtatute duty directed by all ſuch acts for the repair of ſuch turnpike road ſhall exceed 3 days duty in the whole; two juſtices at a ſpecial ſeſſions may proportion the ſtatute duty betwixt ſuch turnpike roads and the other highways in ſuch pariſh, townſhip, or place, in ſuch manner as they ſhall think fit, having firſt ſummoned the clerks and ſurveyors of the turnpike roads, and likewiſe the ſurveyor of the highways for ſuch pariſh, townſhip, or place. 13 *G.* 3. *c.* 84. *ſ.* 32.

Agreement with perſons obliged to repair by tenure or otherwiſe.

4. Whereas many perſons are liable by tenure, incloſure, or otherwiſe, to the repair of certain highways, which having become turnpike roads are more uſed and occaſion an increaſe of expence in repairing the ſame, which ought in ſome degree to be laid upon the turnpike road; the truſtees of ſuch turnpike road may agree for the repair thereof (n.) with the perſon liable to repair the ſame, in ſuch manner as they ſhall think fit, and contribute ſo much to the repair thereof out of the tolls, or out of the ſtatute duty belonging to the ſame, as they ſhall think juſt and reaſonable. 13 *G.* 3. *c.* 84. *ſ.* 62.

Repair of turnpike roads diverted.

5. Where parts of highways or turnpike roads are turned by legal authority, to make the ſame nearer or more commodious, the inhabitants or other perſons who were liable to the repair of the old highway, ſhall be liable to the repair of the new, or ſo much thereof as ſhall be equal to the burden and expence of repairing ſuch old highway from which they are exonerated by turning the ſame as aforeſaid: And if the ſeveral parties intereſted cannot agree, the ſame ſhall be viewed by two juſtices and ſettled by them (o.): And if it ſhall be found more convenient to fix a groſs ſum, or annual ſum, to be paid by the inhabitants or other ſuch perſons, towards the repair of the new highway, inſtead of fixing the part or proportion of ſuch new highway to be repaired by them; the ſaid juſtices may, with the conſent of ſuch perſon or perſons, and of the inhabitants obtained at a veſtry meeting (p.) for that purpoſe, and alſo of the truſtees at a public meeting, if it be turnpike road, order and direct the ſame accordingly. 13 *G.* 3. *c.* 84. *ſ.* 63.

Turnpike road indicted or preſented.

6. When the inhabitants of any pariſh, townſhip, or place ſhall be indicted or preſented for not repairing any highway, being turnpike road, and the court ſhall impoſe a fine for the repair of ſuch road; the ſame ſhall be proportioned, together with the coſts and charges, between ſuch inhabitants and the turnpike truſtees; and the court may order the treaſurer of ſuch turnpike road, to pay the ſame out of the money then in his hands, or next to be received by him, in caſe it ſhall appear to ſuch court, from the circumſtances of ſuch turnpike debts and revenues, that the ſame may be paid without indangering the ſecurity of the creditors who have advanced their money upon the credit of the tolls. 13 *G.* 3. *c.* 84. *ſ.* 33.

In what caſe the ſtatute duty on turnpike roads may be diſpenſed with.

7. Where any turnpike road is in ſuch a ſtate and condition, that the ſtatute duty required to be performed upon the ſame, or ſome part thereof may be diſpenſed with, and employed more conveniently for the benefit of the other public highways within the pariſh, townſhip, or place; the juſtices, at a ſpecial ſeſſions, upon application to them made by the ſurveyor of ſuch pariſh, townſhip, or place, may ſummon the clerk and ſurveyor of the turnpike road to appear before them at ſome other ſpecial ſeſſions, and produce before them a ſtate of the revenues and debts belonging to ſuch turnpike road: And if it ſhall appear to them, that the whole or any part of the ſtatute duty may conveniently be diſpenſed with from ſuch turnpike road, without indangering the ſecurities for the money advanced on the credit of the tolls; they may order

order (q.) the whole or part of ſuch ſtatute duty to be performed upon the highways not being turnpike within ſuch diſtrict, during ſuch time as to them ſhall ſeem juſt and reaſonable. 13 *G.* 3. *c.* 84. *ſ.* 58.

XV. Annoyances to be removed.

Rubbiſh or other matter left upon the road.

1. If the ſurveyor of any turnpike road ſhall ſuffer to remain for the ſpace of 4 days, in any part thereof, within 10 feet on either ſide of the middle of the road, any poſt, heap of ſtones, rubbiſh, or earth, by which the paſſage thereof may be obſtructed or ſtraitened; he ſhall forfeit 40 s. 13 *G.* 3. *c.* 84. *ſ.* 37.

Incroaching.

2. If any perſon ſhall incroach by cauſing to be made any hedge, ditch, or other fence, on any turnpike road, within 30 feet from the middle thereof; or ſhall plough, harrow, or break up the ſoil of any ground, or in ploughing or harrowing the adjacent lands ſhall turn his plough or harrow on any ground within the diſtance of 15 feet from the middle thereof as aforeſaid; he ſhall forfeit 40 s to him who ſhall make information thereof: And the truſtees, or five of them, may cauſe ſuch hedge, ditch, or fence to be taken down or filled up, at the expence of the perſon to whom the ſame ſhall belong. And one juſtice, on proof thereof upon oath, may levy as well the expences of taking down ſuch hedges as aforeſaid, as the ſeveral penalties hereby impoſed, by diſtreſs. 13 *G.* 3. *c.* 84. *ſ.* 38.

Annoyances proſecuted at the expence of the tolls.

3. The truſtees, or five of them, at a meeting, may, if they think fit, direct proſecution by indictment, for any nuſance upon the turnpike road, at the expence of the tolls; provided that proof can be had, by confeſſion of the offender, or by one witneſs. 13 *G.* 3. *c.* 84. *ſ.* 47.

XVI. Demoliſhing gates or doing other damage.

Deſtroying gates or engines.

1. If any perſon ſhall, either by day or night, wilfully or maliciouſly, pull down, pluck up, throw down, level, or otherwiſe deſtroy, any turnpike gate, poſt, rail, wall, chain, bar, or other fence, ſet up to prevent paſſengers from paſſing without paying toll; or any houſe erected for the uſe of ſuch turnpike gate; or any crane, machine, or engine, for weighing carriages; or ſhall reſcue any perſon lawfully in cuſtody for any of the ſaid offences: he ſhall be guilty of felony, and tranſported for 7 years, or committed to priſon for any time not exceeding 3 years, at the diſcretion of the judge before whom

the offender ſhall be tried. And the indictment for ſuch offence may be inquired of, heard, and determined in any adjacent county. 13 G. 3. c. 84. ſ. 42. And the hundred ſhall anſwer damages, as in caſes of robbery. ſ. 43.

If the truſtees ſhall erect a gate where they have no power; the juſtices in ſeſſions, upon complaint, may hear and determine the ſame in a ſummary way, and order the ſheriff to remove it. ſ. 51.

Deſtroying direction poſts, blocks, mile ſtones, or parapets of bridges.

2. Where ſeveral highways meet, the truſtees ſhall cauſe the ſurveyor to erect a ſtone or poſt, with an inſcription thereon in large letters, containing the name of and diſtance from the next market town or towns or other conſiderable place or places to which the ſaid highways reſpectively lead; and alſo, at the ſeveral approaches or entrances to ſuch parts of any highways as are ſubject to deep and dangerous floods, graduated ſtones or poſts, denoting the depth of water in the deepeſt part thereof, and likewiſe ſuch direction poſts or ſtones as the truſtees ſhall judge neceſſary for the guiding of travellers in the beſt and ſafeſt tract thro' the ſaid floods or waters; and alſo ſhall order the ſurveyor to erect mile ſtones or poſts upon ſuch turnpike road, with proper inſcriptions and figures thereon, denoting the names and diſtances from the principal towns or places on each reſpective road. 13 G. 3. c. 14. ſ. 41.

And if any perſon ſhall wilfully or wantonly pull down, obliterate, or deface any mile ſtone or poſt, graduated or direction poſt or ſtone; or ſhall pull up, cut down, remove, or damage any poſt, block, or ſtone fixed in the ground for ſecuring any horſe cauſeway or foot cauſeway, on the ſide of any turnpike road; or dig or cut down any bank of earth caſt up for the ſaid purpoſe; or ſhall break, damage, or throw down the ſtones, bricks, or wood fixed upon the parapets or battlements of bridges: he ſhall, on conviction before one juſtice, upon view, or by the oath of one witneſs, forfeit not exceeding 5 l, nor leſs than 10 s; and in default of payment, ſhall be committed to the houſe of correction, to be whipped and kept to hard labour, not exceeding one calendar month, nor leſs than 7 days, unleſs the ſame be ſooner paid. ſ. 39.

XVII. Side gates.

No ſide gate ſhall be erected on any turnpike road, unleſs the ſame be ordered by the truſtees at a meeting, of which

which 21 days notice ſhall have been given in writing, affixed upon all the toll gates erected on ſuch roads, and alſo in ſome public news paper circulated in that part of the country, ſpecifying the place where ſuch ſide gate is propoſed to be erected; and unleſs nine truſtees at leaſt, being a majority of thoſe preſent, ſhall ſign the ſaid order at ſuch meeting: And no perſon ſhall be liable to pay toll at any gate erected acroſs or on the ſide of any turnpike road, or be ſubject to any penalty for any carriage, horſe, or beaſt, which ſhall only croſs ſuch road, and ſhall not paſs above 100 yards thereon; except over ſome bridge erected at a conſiderable expence by the truſtees. 13 *G.* 3. *c.* 84. *ſ.* 34.

But this ſhall not affect any toll gate directed or authorized to be ſet up at any place particularly ſpecified and mentioned in any act of parliament for repairing any highway, paſſed before the making of the act of the 13 *G.* 3.—14 *G.* 3. *c.* 57.

XVIII. Farming the tolls.

The truſtees of any particular turnpike act, or any 7 or more of them, at a public meeting, may let to farm the tolls, tho' no expreſs power to let the ſame be given by ſuch act: And whenever any tolls ſhall be let to farm, the following directions ſhall be obſerved; that is to ſay, The truſtees ſhall cauſe notice (r.) to be given of the time and place for letting the ſame at leaſt one month before; by fixing the ſame upon every toll gate belonging to ſuch turnpike road, and alſo upon the market croſs of the market town neareſt to the place where the tolls are to be let, and alſo in ſome public news paper circulated in that part of the country, and ſpecifying in ſuch notice the ſum which the ſaid tolls produced in the preceding year, clear of the ſalary for collecting the ſame (in caſe any hired collector was appointed), and that they will let ſuch tolls by auction to the beſt bidder, on his producing ſufficient ſureties for payment of the money weekly or quarterly as ſhall be required by the truſtees; and that they will be put up at the ſum which they were let for, or did produce, in the preceding year, clear of the ſalary of the collector: And the truſtees ſhall provide a glaſs, with ſo much ſand in it as will run from one end of it to the other in one minute; which glaſs ſhall be ſet upon a table, and immediately after every bidding the glaſs ſhall be turned; and as ſoon as the ſand is run out, it ſhall be turned again; and ſo for 3 times, unleſs ſome other bid-

ding intervenes: And if no other perſon ſhall bid, until the ſand ſhall have run thro' the glaſs for 3 times; the laſt bidder ſhall be the farmer of the tolls. And if no bidder ſhall offer, the truſtees may appoint a collector, or fix ſome future day for the letting thereof as aforeſaid, and in that caſe may put them up at ſuch ſum as they ſhall think fit. And if the farmer of the tolls ſhall take a greater or leſs toll than he ought to do, he ſhall forfeit 5 l, and alſo the contract, if the truſtees ſhall think fit to vacate the ſame: And every other gate keeper, who ſhall take a greater or leſſer toll than as aforeſaid, ſhall forfeit 40s. 13 *G.* 3. *c.* 84. *ſ.* 31.

XIX. Mortgagee to account.

Every mortgagee, that ſhall have taken poſſeſſion of the toll gate or bar, ſhall within 14 days after notice given to him in writing from the truſtees or any five of them, render upon oath, to be adminiſtred by any truſtee, an exact account in writing of all money received by him or by any other to his uſe, at ſuch toll gate or otherwiſe, and what he hath expended in keeping or repairing the ſame: And if he ſhall neglect to render ſuch account, he ſhall, on conviction in a ſummary manner before one juſtice, forfeit for every omiſſion the ſum of 10 l, to the uſe of the road. 13 *G.* 3. *c.* 84. *ſ.* 52.

And if the mortgagee ſhall keep poſſeſſion, after he hath received the full ſum due to him, with intereſt and coſts; he ſhall forfeit double the ſum that he ſhall have received over and above what was due to him, with treble coſts: To be recovered by the truſtees, or by their clerk or treaſurer, in any of his majeſty's courts of record; to be applied to the uſe of the roads. *ſ.* 53.

XX. Power of leſſening the tolls.

Where any turnpike road ſhall be ſufficiently or in a great degree repaired, and the greateſt part of the money borrowed upon the credit thereof hath been paid; the truſtees, or 7 of them, at a meeting for that purpoſe, of which one calendar month's notice ſhall be given in writing, to be affixed on all the turnpike gates upon ſuch road, and in ſome public news paper circulated in that part of the country, may leſſen the tolls during ſuch time as they ſhall think proper. 13 *G.* 3. *c.* 84. *ſ.* 29.

Pro-

Provided, that where the whole money borrowed on the credit of the tolls ſhall not have been diſcharged; no ſuch tolls ſhall be leſſened without the conſent of the perſon or perſons intitled to five ſixths of the money remaining due upon ſuch reſpective tolls. *ſ.* 30.

XXI. Penalty of obſtructing the execution hereof.

If any perſon ſhall reſiſt or make forcible oppoſition againſt any perſon employed in the due execution of this act, or of any particular turnpike act;—or ſhall aſſault any collector of the tolls in the execution of his office;—or ſhall paſs thro' any gate, rail, chain, or fence, without paying toll;—or ſhall hinder or attempt to prevent or obſtruct any perſon in meaſuring the wheels of any carriage;—or make any reſcue of cattle or other goods diſtrained;—or if the conſtable ſhall refuſe or neglect to execute any juſtice's warrant: he ſhall forfeit not exceeding 10 l, nor leſs than 40 s, to be paid to the ſurveyor for the uſe of the turnpike road; and if not forthwith paid or ſecured, he ſhall be committed to the common gaol or houſe of correction for any time not exceeding 3 months, unleſs the forfeiture ſhall be ſooner paid. 13 *G.* 3. *c.* 84. *ſ.* 75.

XXII. Levying and application of forfeitures.

All penalties and forfeitures by this act impoſed, and all coſts and charges to be allowed and ordered by authority of the ſame, the manner of levying and recovering whereof is not hereby otherwiſe particularly directed, ſhall be levied by diſtreſs and ſale of the goods of the offender, or of the perſon ordered to pay the ſaid coſts reſpectively, by warrant of one juſtice, on conviction (a. b. c. d. e. f. g.) of the offender by confeſſion or oath of one witneſs, or upon ſuch order made as aforeſaid: the ſame to be paid half to the informer, and half to the ſurveyor for the uſe of the turnpike road, unleſs otherwiſe particularly directed. And in caſe ſuch diſtreſs cannot be found, and ſuch penalties and forfeitures, or the ſaid coſts and charges, ſhall not be forthwith paid; ſuch juſtice ſhall commit the offender, or perſon liable to pay the ſame reſpectively, to the common gaol or houſe of correction for any time not exceeding 3 months, unleſs the ſaid penalty, forfeiture, coſts, or charges ſhall reſpectively be ſooner paid. 13 *G.* 3. *c.* 84. *ſ.* 76.

And any inhabitant of any parish, township, or place where the offence shall be committed, may be a witness, notwithstanding his being an inhabitant. *s.* 74.

And any justice may act in the execution hereof, notwithstanding he may be a creditor or trustee. *Id.*

And if the offender live out of the jurisdiction of the justice, any justice of the limit where the said person shall inhabit shall, on request to him made, and a true copy of the conviction for the penalty or forfeiture, or of the order for the payment of costs or charges, being produced and proved before him upon oath, cause the said penalty or forfeiture, or the said costs or charges, to be levied by distress; and if no sufficient distress can be had, shall commit such person to the common gaol or house of correction of such limit, for the time and in the manner aforesaid. *s.* 76.

Provided, that no warrant of distress, unless otherwise directed by this act, shall be issued for levying any penalty or forfeiture, costs or charges, until six days after the offender shall have been convicted, and an order made and served upon him for payment thereof. *s.* 77.

Provided also, that every penalty or forfeiture that shall be recovered on the information of the surveyor, or toll taker, or other person employed by the trustees, and receiving salaries or rewards for their services, and not otherwise directed by this act, shall be applied to the amending of the said turnpike roads respectively, and to no other use. *s.* 78.

And to prevent fraudulent convictions, the justice before whom any information shall be brought, shall, in case any other information or conviction shall be set up by way of defence, proceed to examine into the real merits of such information, proceeding, or conviction; and if it shall appear that the same was not done to recover and apply the penalty or forfeiture for the real ends for which it was intended, but to favour the offender, such information or conviction shall be deemed to be fraudulent, and the justice may proceed to convict as if no such information or conviction had been made. *s.* 48.

And every prosecutor or informer may, at his option, sue for and recover any forfeiture or penalty imposed by this or any other act for erecting turnpikes or repairing turnpike roads, in manner following; *viz.* If the same shall not amount to 40 s, it shall be recoverable only by information before a justice; and if it shall amount to 40 s or upwards, it may be recovered either before a justice as aforesaid, or by action of debt in any of his majesty's courts of record; in which it shall be sufficient to declare, that

that the defendant is indebted to the plaintiff in the ſum of ——— being forfeited by an act paſſed in the 13th year of his preſent majeſty, intitled, *An act to explain, amend, and reduce into one act of parliament, the general laws now in being, for regulating the turnpike roads in that part of* Great Britain *called* England, *and for other purpoſes:* And the plaintiff, if he recovers, ſhall have full coſts. Provided, that ten days notice in writing be given to the party offending, previous to the commencement of the action; and that the ſame be brought within one calendar month after the offence committed. *ſ.* 79.

XXIII. Irregularity in the proceedings.

Where any diſtreſs ſhall be made for any ſum to be levied by virtue of this act, the diſtreſs ſhall not be deemed unlawful, nor the party making the ſame be deemed a treſpaſſer on account of any defect or want of form in the proceedings; nor ſhall the party diſtraining be deemed a treſpaſſer *ab initio*, on account of any irregularity which ſhall be afterwards done by the party diſtraining; but the perſon aggrieved by ſuch irregularity may recover ſatisfaction for the ſpecial damage in an action on the caſe. 13 *G.* 3. *c.* 84. *ſ.* 80.

And the plaintiff ſhall not recover in any action for ſuch irregularity, if tender of ſufficient amends ſhall be made before the action brought; and if no ſuch tender hath been made, the defendant may by leave of the court, at any time before iſſue joined, pay into court ſuch ſum as he ſhall ſee fit; whereupon ſuch proceedings ſhall be had as in other actions where the defendant is allowed to pay money into court. *ſ.* 81.

And no proceedings upon this act ſhall be quaſhed or vacated for want of form, or removed by certiorari or other proceſs into any of his majeſty's courts of record at Weſtminſter. *ſ.* 82.

XXIV. Appeal.

If any perſon ſhall think himſelf aggrieved by any thing done by any juſtice in purſuance of this act, except under the particular circumſtances hereafter mentioned, and for which no particular method of relief is herein otherwiſe appointed; he may appeal to the general quarter ſeſſions, giving notice in writing (h.) to the juſtice of his intention to bring ſuch appeal, and of the matter thereof, within ſix days after the cauſe of ſuch complaint aroſe, and with four days after ſuch notice entring into recog-

nizance

nizance before a juſtice with one ſufficient ſurety, conditioned to try ſuch appeal at, and abide the order of, and pay ſuch coſts as ſhall be awarded by the juſtices at ſuch quarter ſeſſions. And the juſtice, having received notice of ſuch appeal, ſhall return all proceedings before him touching the matter of ſuch appeal, to the ſaid ſeſſions, on pain of 5 l. And the juſtices at ſuch ſeſſions, on proof of the notice given, and of the entring into ſuch recognizance, ſhall hear and determine the appeal in a ſummary way, and award coſts to either party as they ſhall ſee cauſe, to be levied and recovered as herein before directed. 13 *G.* 3. *c.* 84. *ſ.* 82.

Provided, that no appeal ſhall be made againſt any conviction for any penalty or forfeiture, unleſs the perſon convicted ſhall, at the time of the conviction if he ſhall be then preſent, if not, within ſix days after give notice of his intention to appeal, and at the ſame time enter into recognizance or give ſecurity with ſufficient ſureties, to pay ſuch penalty or forfeiture, in caſe the conviction ſhall be affirmed upon the appeal: And on his giving ſuch ſecurity, the further proceedings for ſuch penalty or forfeiture ſhall be ſuſpended, until the appeal ſhall be heard and determined. *ſ.* 83.

XXV. Limitation of actions.

If any action ſhall be commenced againſt any perſon, for any thing done in purſuance of this act, the ſame ſhall be commenced within three calendar months after the fact committed, and in the county where the defendant reſides or the fact was done: And the defendant may plead the general iſſue, and if he prevails in the action, he ſhall have treble coſts. 13 *G.* 3. *c.* 84. *ſ.* 85.

The forms of proceedings under this title are ſpecially directed by the ſeveral acts, to be uſed upon all occaſions, with ſuch additions or variations only as may be neceſſary to adapt them to the particular exigencies of the caſe: And no objection ſhall be made, or advantage taken, for want of form in any ſuch proceedings. So that it is neceſſary only in this place to inſert the ſaid forms as they ſtand in the acts; unto which are added divers forms of *indictments*, and one other precedent of an *order* for payment of a penalty or forfeiture previous to the warrant of diſtreſs.

A. War-

A. Warrant for making liſts of perſons qualified to be ſurveyors.

Middleſex. { To the conſtables, &c.

IN order to carry into execution an act made in the 13*th year of the reign of his majeſty king* George *the third, for the amendment and preſervation of the public highways, you are hereby ſeverally required, forthwith to give public notice to the churchwardens, ſurveyors of the highways, and houſeholders, being aſſeſſed to any parochial or public rate within your reſpective liberties, that they do aſſemble on the* 22d *day of* September *next, at the church or chapel, or if there ſhall be no church or chapel, then at the uſual place of public meetings within their reſpective liberties, at the hour of* 11 *in the forenoon; and that the major part of them ſo aſſembled do make a liſt of the names of at leaſt ten perſons living therein, who each of them have an eſtate in lands, tenements, or hereditaments, lying within the ſame, in their own right, or in the right of their wives, of the value of* 10 l *by the year; or a perſonal eſtate of the value of* 100 l; *or are occupiers or tenants of houſes, lands, tenements, or hereditaments, of the yearly value of* 30 l: *And if there ſhall not be ten perſons having ſuch qualifications, then that they do inſert in ſuch liſt the names of ſo many of ſuch perſons as are ſo qualified, together with the names of the moſt ſufficient and able inhabitants not ſo qualified, as ſhall make up the number ten, if ſo many can be found, if not, ſo many as ſhall be there reſident, to ſerve the office of ſurveyor of the highways. And you are alſo ſeverally required, within three days after making the ſaid liſt, to deliver a copy thereof to one of the juſtices of peace of the ſaid* ——— *living in or near the ſame* [pariſh, &c.] *and alſo to give perſonal notice to, or cauſe notices in writing to be left at the places of abode of the ſeveral perſons contained in ſuch liſt, informing them of their being ſo named, to the intent that they may ſeverally appear before the ſaid juſtices at their ſpecial ſeſſions to be holden at* —— *within the ſaid* ——— *on the* ——— *day of* ——— *now next enſuing, at the hour of* ——— *in the forenoon of the ſame day, to accept ſuch office, if they ſhall be appointed thereto, or to ſhew cauſe, if they have any, againſt their being appointed. And you are likewiſe to give notice to the preſent ſurveyors of the highways within your reſpective liberties, to appear at the ſame time and place, and produce ſuch accounts and liſts before the ſaid juſtices as are required*

quired by the ſaid act. And you, and each of you, are perſonally to appear before the ſaid juſtices, at their ſaid ſpecial ſeſſions, and then and there ſeverally deliver to the ſaid juſtices the ſaid original liſt or liſts taken within your reſpective liberties, and give an account of the execution of this our precept. Given under our hands and ſeals, the ——— day of ——— in the year of our Lord ———.

B. Liſt of perſons to be returned to the juſtices.

A LIST *of the ſeveral perſons named for ſurveyors of the highways for the* [inſert the name of the pariſh, townſhip, or place] *at a meeting held at ——— in the ſaid ——— the ——— day of ——— 1774.*

A. B.
C. D. &c.

[This is to be added when a particular perſon is recommended—*We whoſe names are ſubſcribed, being two parts in three of the perſons aſſembled at the meeting aforeſaid, do agree in the choice of* A. S. *as a fit perſon to ſerve the office of ſurveyor for the ——— of ——— aforeſaid, and in the allowance to him of ——— for his trouble in executing the ſame for the year enſuing; and we do recommend the ſaid* A. S. *to the juſtices for their appointment accordingly.*]

C. Notice to the perſons in the liſt.

A. B. *take notice, That you was at a meeting held at ——— on the ——— day of ——— named as one of the perſons to be returned to the juſtices as fit to ſerve the office of ſurveyor for the ſaid ——— for the year enſuing; and if you have any cauſe to ſhew why you ſhould not be appointed to ſerve ſuch office, you muſt make the ſame appear before the juſtices, at their ſpecial ſeſſions to be holden at ——— on the ——— day of ——— next.*

A. C. Conſtable, &c.

D. Appointment of a ſurveyor.

Middleſex. { At a ſpecial ſeſſions held at ——— in the hundred of ——— by juſtices of the peace for the ſaid county, acting within the ſaid hundred, on the ——— day of ——— 1774.

WE *do hereby nominate and appoint* A. S. *of ——— in the ſaid hundred, ſurveyor of the highways within the*

ſaid

ſaid —— *for the year enſuing: And you the ſaid* A. S. *are faithfully and truly to execute the ſaid office of ſurveyor, according to the directions of the ſtatute paſſed in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways;" an abſtract of the material parts of which ſtatute is hereunto annexed. Given under our hands and ſeals the day and year above mentioned.*

If a ſurveror is appointed with a ſalary, then after the words *year enſuing*, add, *And we do allow the ſaid* A. S. *the ſalary of* —— *for his trouble.*

E. Appointment of an aſſiſtant to the ſurveyor.

Middleſex. { At a ſpecial ſeſſions held at —— in the hundred of —— by juſtices of the peace for the ſaid county, acting within the ſaid hundred, on the —— day of —— 1774.

WE *do hereby nominate and appoint* A. S. *a ſubſtantial inhabitant of the* —— *of* —— *in the ſaid hundred, aſſiſtant to* A. B. *whom we have appointed ſurveyor of the highways for the ſaid* —— *And you the ſaid* A. S. *are, to the beſt of your ſkill and judgment, to aſſiſt the ſaid ſurveyor, whenever requeſted by him, in calling-in and attending the performance of the ſtatute duty, in collecting the compoſitions, fines, penalties, and forfeitures, and in making and collecting the aſſeſſments, and in making out and ſerving the notices authorized by the act paſſed in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways," and in ſuch other matters and things as ſhall be reaſonably required of you by the ſaid ſurveyor, in the execution of his office of ſurveyor, purſuant to the ſaid act; and you are juſtly and truly to account with, and pay to the ſaid ſurveyor, or to his order, the money which ſhall come to your hands by the means aforeſaid. Given under our hands and ſeals, the day and year abovementioned.*

F. Notice of the time and place for compoſitions.

NOTICE *is hereby given, That all perſons who are inclined to compound for their ſtatute duty within the* —— *of* —— *are hereby required to ſignify their intention to compound for the ſame to* A. S. *the ſurveyor of the highways for the ſaid* —— *at the houſe of* —— *of* —— *on the* —— *day of this inſtant* November, *between the hours of* —— *and* —— *And they are hereby required, at the ſame time, or within the ſpace of*

of one month after, to pay their compoſition money to the ſaid ſurveyor: And alſo, that all perſons who are liable yo pay money for the lands, tenements, woods, tithes, and hereditaments, which they occupy, or in lieu of their duty within the ſaid —— according to the act made in the thirteenth year of his majeſty king George *the third "For the amendment and preſervation of the highways," are required to pay the ſame to the ſaid ſurveyor, on the day, or within the time aforeſaid. Dated this —— day of* November, 1774.

A. S. Surveyor.

G. Notice to perform ſtatute duty.

A. B. *you are hereby required to ſend* (as the caſe ſhall be) *to ——— within the —— of —— on the —— and —— days of ——— next at —— o'clock in the morning of each day, in order to perform ſuch duty upon the highways within the ſaid —— as ſhall be required by the ſurveyor, purſuant to the direction of the act paſſed in the 13th year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways." Dated this —— day of ——— 1774.*

If perſonal labour is required, then ſay, *You are hereby required, by yourſelf or a ſufficient labourer, to attend at —— within the* &c.

H. Notice from the ſurveyor to prune hedges, ſcour ditches, and remove nuſances.

To C. D. of ———

IN purſuance of the directions given by the act paſſed in the 13th year of the reign of his majeſty king George *the third "For the amendment and preſervation of the highways," I* A. S. *ſurveyor of the highways for the ——— of —— do hereby give you notice, forthwith to cut, prune, and plaſh the hedges, and cut or prune the trees, and to open, cleanſe and ſcour the ſeveral ditches and watercourſes, belonging to you, in or near the highway, lying between —— and —— to the intent that the water may be drained from the ſaid highway, and that the ſun and wind may not be excluded from ſuch highway, to the prejudice thereof:*

[Or, *forthwith to remove the* (*dung, timber, ſtone,* &c.) *placed by you in a certain part of the king's highway, lying between —— and —— in the —— of —— to the obſtruction and annoyance of the ſaid highway:*]

Dated this —— day of —— 1774.

A. S.

I. Allowance of charges to the ſurveyor for removing the ſame.

Middleſex. WHEREAS *complaint hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, by the oath of* A. S. *ſurveyor of the highways for the —— of —— in the ſaid county, that* A. O. *of ——— having had due notice to cut and prune his hedges, and cleanſe and ſcour his ditches and watercourſes, within or adjoining to the public highway between ——— and —— in the ſaid ——— of —— hath neglected to do the ſame within the time required by ſuch notice, and that the ſaid* A. S. *hath cauſed the ſame reſpectively to be cut, pruned, cleanſed, and ſcoured, purſuant to the directions of the act paſſed in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways," and hath expended therein the ſum of — as appears by an account now produced to me, which I think a reaſonable charge, and do therefore allow the ſame, and hereby order the ſaid* A. O. *to pay the ſaid ſum of — to the ſaid* A. S. *within ſix days from the time of his being ſerved with this order. Given under my hand and ſeal this —— day of —* 1774.

K. Order of a juſtice to make new drains.

Middleſex. { To A. S. of —— ſurveyor of the highways for the —— of ——.

WHEREAS *complaint hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that the ditch, gutter, or watercourſe, for conveying the water from the highway at —— in the —— of —— in the ſaid county, is not ſufficient for that purpoſe, and that the cleanſing and opening the ſame will not effectually carry off the ſaid water, but that the ſaid highway may be effectually drained, and the water carried off, by making a new ditch or drain thro' the lands or grounds of ——— lying near the ſame, for the length of —— yards and the breadth of —— feet; and the ſaid ——— having been duly ſummoned to appear before me, to ſhew cauſe, if he had any, why the ſaid ditch or drain ſhould not be made, and the ſaid —— not appearing (or, not ſhewing ſufficient cauſe againſt the ſame), and it appearing*

pearing to me that such ditch or drain is necessary, I do hereby order and require you to enter into and upon the said lands of the said ——— *and there make or cause to be made a new ditch or drain, of the length and breadth aforesaid, and of a convenient depth, making or tendering sufficient satisfaction to the said* ——— *for the damages to be done thereby, within one calendar month after the same shall be so made; such damages to be settled and ascertained in manner directed by the act passed in the thirteenth year of the reign of his majesty king* George *the third "For amendment and preservation of the highways." Given under my hand this* ——— *day of* ——— 1774.

L. Precept for erecting guide posts or water marks.

Middlesex. { At a special sessions held at ——— for the hundred of —— in the said county, before justices of the peace for the said county, acting within the said hundred on the —— day of —— 1774.

To the surveyor of the —— of —— in the said hundred.

YOU *are hereby required forthwith to erect, or cause to be erected, in the most convenient place upon the highway lying between* —— *and* —— *within your liberty, where the roads cross or branch out, a guide post, with proper inscriptions painted on both sides thereof, in large legible letters, denoting the towns of* —— *and* —— (or other places as the justices shall think proper); *and you are allowed to charge the reasonable expences of providing and erecting the same in your accounts.*

Where graduated stones or posts are necessary to prevent accidents from water, it may be varied thus: —— *In the most convenient place upon the highway, at the approach or entrance on each side of the ford or water called* ——— *at* —— *within your liberty, graduated posts, denoting the depth of water in the deepest part thereof, through which such highway passes.* ———

M. Order

M. Order for widening or diverting an highway.

Middleſex. WE —— *two of his majeſty's juſtices of the peace for the ſaid county, acting within the hundred of —— within the ſaid county, having, upon view, found that a certain part of the highway between —— and —— in the* (pariſh, &c.) *of —— in the ſaid hundred, for the length of —— yards or thereabouts, and particularly deſcribed in the plan hereunto annexed, is for the greateſt part thereof narrow, but may be conveniently inlarged and widened, by adding thereto from the lands and grounds of —— and —— of the length of —— yards or thereabouts, and of the breadth of —— feet or thereabouts, particularly deſcribed in the plan hereunto annexed, which we think will be much more commodious to the publick; we do hereby order, that the ſaid highway be widened and inlarged thro' the lands aforeſaid; and that the ſurveyor of the highways for the —— of —— where the ſaid old highway lies, do forthwith proceed to treat and make agreement with the ſaid —— and —— for the recompence to be made for the ſaid ground, and for the making ſuch ditches and fences as ſhall be neceſſary, in ſuch manner, with ſuch approbation, and by purſuing ſuch meaſures and directions in all reſpects, as are warranted and preſcribed by the ſtatute made in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways:" And in caſe ſuch agreement ſhall be made as aforeſaid, we do order an equal aſſeſſment, not exceeding the rate of ſixpence in the pound, to be made, levied, and collected upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the ſaid —— of —— and that the money ariſing thereupon be paid and applied in making ſuch recompence and ſatisfaction as aforeſaid, purſuant to the directions of the ſaid act.*

If the road is to be turned; then, after the words *is for the greateſt part thereof narrow*, ſay, *and cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the ſame; and having viewed a courſe propoſed for the ſaid new highway through the lands and grounds, &c.* And afterwards, inſtead of the words *be widened and inlarged*, ſay, *be diverted and turned.*

N. Certificate to the ſeſſions thereupon.

Middleſex. } To the juſtices of the peace, at their general quarter ſeſſions to be held at —— in the ſaid county, the —— day of —— 1774.

WE the within named A. B. *and* C. D. *do hereby certify to the ſaid court of quarter ſeſſions, that we made and ſigned the within order; and that, with our approbation, and by our direction, the ſaid ſurveyor hath treated with the ſaid —— and —— for the ſaid lands required for the purpoſes aforeſaid, but was not able to make any agreement for that purpoſe with them or either of them; and that he tendered to the ſaid —— the ſum of —— and to the ſaid —— the ſum of —— as a recompence for the ſaid ground, and for making the ſaid ditches and fences; which they, and each of them, refuſed to receive.*

O. Order for ſtopping up an old way.

WE whoſe names are ſubſcribed, being the juſtices of peace who have viewed the ſeveral highways deſcribed in the plans hereunto annexed, and made an order for diverting the old highway; and being ſatisfied that the new highway therein deſcribed is properly made, and fit for the reception of travellers, do hereby order the ſaid old highway, being of the length of —— yards and of the breadth of —— feet upon a medium, as appears by the ſaid plan, to be ſtopped up, and the land and ſoil thereof to be ſold by the ſaid ſurveyor to —— whoſe land adjoins thereto, if he ſhall be willing to purchaſe the ſame, for the full value thereof; if not, to ſome other perſon or perſons, for the full value thereof.

This is to be added, if needful; and to be varied as circumſtances may require.——*Reſerving nevertheleſs to —— a free paſſage for perſons, horſes, cattle, and carriages, through the land and ſoil of the ſaid old highway to and from the* (land, &c.) *belonging to him, called —— according to his ancient uſage thereof.*

P. Order

P. Order for turning a highway thro' any perſon's lands, with the owner's conſent.

Middleſex. WE —— and —— *eſquires, two of his majeſty's juſtices of peace for the ſaid county, at a ſpecial ſeſſions held at* —— *in the hundred of* —— *in the ſaid county, on the* —— *day of* —— 1774, *having upon view found, that a certain part of a highway within the* —— *of* —— *in the ſaid hundred, lying between* —— *and* —— *for the length of* —— *yards or thereabouts, and particularly deſcribed in the plan hereunto annexed, may be diverted and turned ſo as to make the ſame nearer* [or, *more commodious*] *to the publick; and having viewed a courſe, propoſed for the new highway, in lieu thereof, thro' the lands and grounds of* —— *of the length of* —— *yards or thereabouts, and of the breadth of* —— *feet or thereabouts, particularly deſcribed in the plan hereunto annexed, and having received evidence of the conſent of the ſaid* —— *to the ſaid new highway being made thro' his lands herein before deſcribed, by writing under his hand and ſeal; we do hereby order, that the ſaid highway be diverted and turned through the lands aforeſaid; and we do order an equal aſſeſſment, not exceeding the rate of* 6 *d in the pound, to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the ſaid* —— *of* —— *and that the money ariſing thereupon be paid and applied in making recompence and ſatisfaction for the ſame unto the ſaid* ——.

Q. Form of ſuch conſent.

I A. B. *of* —— *in the county of* —— *being owner of the lands deſcribed in the plan hereunto annexed, through which part of a certain highway, lying between* —— *and* —— *is intended to be diverted and turned, in conſideration of the ſum of* —— *to be paid to me for the ſaid land and the ſoil thereof* [or as the caſe ſhall be], *do hereby conſent to the making and continuing ſuch new highway through my ſaid lands. Given under my hand and ſeal, this* —— *day of* —— 1774.

R. Notice of application to be made for a general aſſeſſment.

Middleſex. NOTICE *is hereby given, that application will be made to the juſtices of the peace acting for the hundred of* ——— *in the ſaid county, at their ſpecial ſeſſions to be held at* ——— *in the ſaid hundred, on the* ——— *day of* ——— 1774, *for an equal aſſeſſment to be made, not exceeding* ——— *in the pound, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments within the* —— *of* —— *for the uſe and benefit of the highways within the ſaid* ——— *Dated this* ——— *day of* —— 1774.

A. B. Surveyor.

S. Order for ſuch general aſſeſſment.

Middleſex. At a ſpecial ſeſſions for the highways, held at —— in the hundred of —— in the ſaid county, the —— day of —— 1774, by juſtices of peace for the ſaid county acting within the ſaid hundred.

UPON *application made to us by the ſurveyor of the highways for the* —— *of* —— *and upon evidence given upon oath before us, that the duty directed to be performed, and the money authorized to be collected and received, by an act paſſed in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways," have been performed, applied, and expended, according to the directions of the ſaid act:*

[Or,—*upon evidence given upon oath before us, we are fully ſatisfied, that the common highways, bridges, cauſeways, ſtreets, and pavements belonging to the* ——— *of* ——— *are ſo far out of order, that they cannot be ſufficiently amended and repaired, paved, cleanſed, and ſupported, by the means preſcribed by an act paſſed in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways:"*]

And it appearing to us, that notice hath been duly given of ſuch intended application, according to the direction of the ſaid act, we do hereby order, direct, and appoint, that an equal aſſeſſment, not exceeding the ſum of —— *in the pound, upon all and*

and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within the ſaid —— of —— ſhall be forthwith made by the ſaid ſurveyor, and ſhall be allowed by one juſtice of the peace for the ſaid hundred, and ſhall be collected by the ſaid ſurveyor; and that the money ſo to be aſſeſſed and collected ſhall be applied for and towards the amending, repairing, paving, cleanſing and ſupporting ſuch highways, cauſeways, ſtreets, pavements, and bridges, and for other purpoſes as directed by the ſaid act.

T. Surveyor's oath on paſſing his accounts.

I A. B. *do ſwear, that the accounts now produced and delivered by me, as ſurveyor of the highways for the —— of —— for the laſt year, are juſt and true, to the beſt of my knowledge. —So help me God.*

U. Allowance of the accounts.

October the —— 1774.

THESE *accounts were examined and allowed before* ——

V. Indictment for not repairing a common highway.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and ancient king's highway leading from the town of —— in the county of —— towards and unto the market town of —— in the county of ——, uſed for all the liege ſubjects of our ſaid lord the king, and of his predeceſſors, with their horſes, coaches, carts, and carriages to go, return, paſs, ride, and labour at their will and pleaſure, and that a certain part of the ſame king's common highway, ſituate, lying and being in the pariſh of —— in the county of —— aforeſaid, beginning at the place called —— and ſo continued towards the market town of —— aforeſaid, for the length of —— feet, and being of the breadth of —— feet, on the —— day of —— in the —— year of the reign of —— and continually afterwards, until the day of the taking of this inquiſi-*

tion, was and yet is in great decay, for the want of due reparation and amendment of the ſame; ſo that the ſubjects of our ſaid lord the king, paſſing and travelling through the ſame, with their horſes, coaches, carts and carriages, could not during the time aforeſaid, nor yet can go, return, paſs, ride, and labour without great danger; to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, paſſing through that way, and againſt the peace of our ſaid lord the king, his crown and dignity; And that the inhabitants of the ſaid pariſh of —— in the ſaid county of —— the common highway aforeſaid (ſo as aforeſaid being in decay) ought to repair and amend, when and ſo often as it ſhall be neceſſary.

Or, *that* A. O. *of —— aforeſaid, gentleman, ought by reaſon of the tenure of his lands and tenements, ſituate, lying, and being at —— aforeſaid in the county aforeſaid, to repair and amend the ſaid highway, when and ſo often as it ſhall be neceſſary.*

Indictment for not repairing an ancient horſe and foot way.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that from the time of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from —— in the county of —— to —— in the county of —— for all the liege ſubjects of our now lord the king, and his anceſtors, on horſeback and on foot, to go, return, paſs, ride, labour, and drive their cattle at their will, and that a certain part of the ſame common highway, ſituate, lying, and being within the pariſh of —— in the county of —— aforeſaid, beginning at a place called —— and ſo continued towards the ſaid —— of —— in the county of —— aforeſaid, of the length of —— feet, and the breadth of —— feet, on the —— day of —— in the —— year of the reign of —— and continually afterwards, until the day of the taking this inquiſition, at the pariſh of —— aforeſaid in the county aforeſaid, was, and yet is, very ruinous, miry, deep, broken, and in ſuch decay, for want of due reparation and amendment of the ſame, that the liege ſubjects of our ſaid lord the king, by and through the ſame way, with their horſes and cattle, could not during the time aforeſaid, nor yet can go, return, paſs, ride, and labour, as they ought and were wont to do, without great danger of themſelves and of their goods,*

to

to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding, and labouring, and againſt the peace of our ſaid lord the king. And that the inhabitants of the ſame pariſh of —— —— in the county aforeſaid, the ſame common highway, ſo as aforeſaid being in decay, ought to repair and amend, when, and ſo often as it ſhall be neceſſary.

Indictment for incroaching upon a highway, by building thereupon.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of —— carpenter, the —— day of —— in the —— year —— with force and arms, at —— in and upon a common highway, in a certain place commonly called —— there leading from —— to —— by a certain building there containing in length —— feet, and in breadth —— feet, by him the ſaid* A. O. *erected and built, hath unlawfully and unjuſtly incroached, and doth yet incroach, and the building aforeſaid ſo as is aforeſaid erected and built by him the ſaid* A. O. *from the aforeſaid —— day of —— in the year aforeſaid, unto the day of exhibiting this information, at —— aforeſaid in the county aforeſaid, with force and arms unlawfully and unjuſtly hath continued, and doth yet continue, by reaſon whereof the common highway aforeſaid hath become and is greatly ſtraitned, ſo that the lieges and ſubjects of the ſaid lord the king upon and through the ſame common highway aforeſaid, with their horſes, carts, and carriages, cannot go, paſs, ride, and labour as they ought and were wont to do, to the great and common nuſance of all the lieges and ſubjects of the ſaid lord the king in and through the ſaid common highway going, paſſing, riding, and labouring, and againſt the peace of the ſaid lord the king.* Trem. 196.

Indictment for incloſing the highway.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That whereas from the time whereof the memory of man is not to the contrary, the liege ſubjects of our ſaid lord the king had, and lawfully uſed a certain common highway at —— in the ſaid county, in a certain place there called —— leading from the town of —— afore-*

——— *aforeſaid, to the town of* ——— *for themſelves and their goods, without any ſtoppage or hindrance by any ditches, hedges, or other obſtacles whatſoever; nevertheleſs one* A. O. *of* ——— *aforeſaid, in the county of* —— *aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* —— *with force and arms at* —— *aforeſaid, in the county of* ——— *aforeſaid, in the place aforeſaid called* —— *upon the common highway aforeſaid, a certain ditch and quickſet hedge did make, and the ſaid ditch and quickſet hedge ſo as aforeſaid made doth yet continue and keep; to the great ſtoppage and hindrance of the liege ſubjects of our ſaid lord the king, paſſing in and thro' the ſaid common highway, and againſt the peace of our ſaid lord the king.*

Indictment for laying timber or other obſtructions in the highway.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* —— *in the county aforeſaid, yeoman, on the* —— *day of* —— *in the* —— *year of the reign of* ——— *and on divers other days and times as well before as afterwards, with force and arms, at* ——— *in the ſaid county, in and upon the king's common highway there, leading from* —— *unto the town of* ——— *divers great pieces of timber put and placed, and cauſed to be put and placed, and the ſame great pieces of timber ſo as aforeſaid put and placed from the aforeſaid* ——— *day of* ——— *in the* —— *year aforeſaid, until the day of exhibiting this information, in and upon the king's common highway aforeſaid to be, lie, and remain, hath permitted and doth ſtill permit, to the grievous and common nuſance of all the lieges and ſubjects of the ſaid lord the king, upon and through the king's common highway aforeſaid going, paſſing, riding and travelling, and againſt the peace of our ſaid lord the king, his crown and dignity.* Trem. 197.

Or, ——— *great quantity of dung and other filth, by reaſon whereof divers hurtful and unwholeſome ſmells from the ſaid dung and other filth did then and there ariſe, and thereby the air there became, was, and is corrupted and infected* ———.

Or, —— *cart loads of rubbiſh* —— *by reaſon whereof the ſaid highway for the whole time aforeſaid was ſtraitned and obſtructed, ſo that the liege ſubjects of our ſaid lord the king could*

not

not ſo freely paſs and repaſs about their lawful buſineſs, through the ſaid common highway there, as they ought and have been accuſtomed———.

Indictment for ſtopping up a watercourſe, whereby the highway is overflowed.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of ——— in the county aforeſaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at the pariſh aforeſaid, in the county aforeſaid, a certain ancient watercourſe adjoining to the king's common highway, within the ſame pariſh, leading from the town of ——— in the county aforeſaid, towards and unto ——— with gravel and other materials, unlawfully und injuriouſly did obſtruct and ſtop up; and the ſaid watercourſe, ſo as aforeſaid obſtructed and ſtopped up from the ſaid ——— day of ——— in the year aforeſaid until the day of the taking of this inquiſition, at the pariſh aforeſaid in the county aforeſaid, unlawfully and injuriouſly hath continued and ſtill doth continue, by reaſon whereof the rain and waters that were wont and ought to flow and paſs through the ſaid watercourſe, on the ſame day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquiſition, did overflow and remain, in the king's common highway aforeſaid, and thereby the ſame was, and yet is greatly hurt and ſpoiled; ſo that the liege ſubjects of our ſaid lord the king, through the ſame way with their horſes, coaches, carts and carriages, then and on the ſaid other days and times could not nor yet can go, return, paſs, ride, and labour as they ought, and were wont to do, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding and labouring, and againſt the peace of our ſaid lord the king.*

W. Notice for a veſtry or other public meeting.

NOTICE *is hereby given, That a veſtry or public meeting will be held at———on the———day of ——— next, in order to* [here ſet forth the particular occaſion]. *Dated the——day of——* 1774.

A. C. Conſtable, &c.

X. Preſent-

X. Preſentment by a juſtice of a road being out of repair.

Middleſex. AT *the general quarter ſeſſions of the peace of our lord the king held for the ſaid county, at —— in the ſaid county, on——the——day of——in the—— year of the reign of——before——and——eſquires, and others their companions, juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed,* J. P. *eſquire, one of the juſtiees of our ſaid lord the king, aſſigned for the purpoſes aforeſaid, by virtue of an act made in the thirteenth year of the reign of his majeſty king* George *the third "For the amendment and preſervation of the highways," upon his own view* [or, if it is upon the information of the ſurveyor, then ſay, *upon information on oath to him given by* A. S. *ſurveyor of the highways for the——of —— in the ſaid county*] *doth preſent, That from the time whereof the memory of man is not to the contrary, there was and yet is a certain common and ancient king's highway, leading from the town of —— in the ſaid county, towards and unto —— within the ſame county, uſed for all the king's ſubjects, with their horſes, coaches, carts and carriages, to go, return, and paſs at their will; and that a certain part of the ſame king's common highway, commonly called——, ſituate, lying, and being in the—— of —— in the ſame county, containing in length —— yards, and in breadth —— feet, on the —— day of —— in the —— year of the reign of —— and continually afterwards until the preſent day, was and yet is very ruinous, deep, broken, and in great decay, for want of due reparation and amendment, ſo that the ſubjects of the king, thro' the ſame way, with their horſes, coaches, carts, and carriages, could not during the time aforeſaid, nor yet can go, return, or paſs, as they ought and were wont to do; to the great damage and common nuſance of all the king's ſubjects thro' the ſame highway going, returning, or paſſing, and againſt the peace of our ſaid lord the king: And that the inhabitants of the —— of —— aforeſaid in the county aforeſaid, the ſaid common highway, ſo in decay, ought to repair and amend, when and ſo often as it ſhall be neceſſary. In teſtimony whereof, the ſaid* J. P. *to theſe preſents hath ſet his hand and ſeal, this —— day of —— in the year aforeſaid.*

Y. War-

Y. Warrant of diſtreſs for an aſſeſſment.

Middleſex. { To the conſtable, &c.

WHEREAS *by an aſſeſſment made upon the occupiers of lands, tenements, woods, tithes, and hereditaments, within the* ——— *of* —— *in the ſaid county, for the purpoſes of &c.* [as ſtated in the juſtices order] *purſuant to an order of juſtices for that purpoſe, according to the directions of the act paſſed in the thirteenth year of the reign of his majeſty king* George *the third* "*For the amendment and preſervation of the highways,*" A. O. *was charged with the ſum of* —— *as his ſhare and proportion of the ſaid aſſeſſment, in reſpect of the lands, tenements, woods, tithes, and hereditaments, which he occupied within the ſaid* —— *And whereas it appears to me upon the oath of* —— *that the ſaid ſum of* —— *hath been duly demanded from the ſaid* A. O. *and that he hath refuſed to pay the ſame for the ſpace of ten days after ſuch demand made; Theſe are therefore, in his majeſty's name, to command you to levy the ſaid ſum of* —— *by diſtreſs of the goods and chattels of the ſaid* A. O. *And if the ſame ſhall not be paid within the ſpace of four days next after ſuch diſtreſs by you taken, together with the reaſonable charges of taking and keeping the ſame, that you do then ſell the ſaid goods and chattels ſo by you diſtrained; and out of the money ariſing by ſuch ſale, that you do pay unto* A. S. *the ſurveyor of the highways for the ſaid* ——— *of* ——— *the ſaid ſum of* ——— *to be employed for the purpoſes aforeſaid; and that you do return the ſurplus thereof to the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods and chattels of the ſaid* A. O. *whereon to levy the ſaid ſum of* ——— *that then you certify the ſame to me, together with this warrant. Given under my hand and ſeal the* —— *day of* ——— 1774.

a. Information againſt an offender.

Middleſex. BE *it remembred, that on the* —— *day of* ——— 1774, A. I. *of* ——— *in the ſaid county informeth and maketh oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of* ——— *in the ſaid county* [Here deſcribe the offence

fence particularly, and follow the words of the act as near as may be] *contrary to the ſtatute made in the thirteenth year of the reign of his majeſty king* George *the third* "*For the amendment and preſervation of the highways,*" *which hath impoſed a forfeiture of* —— *for the ſaid offence.*

A. I.

Taken and ſworn the ——— *day of* —— *Before me* J. P.

If it is on the Turnpike act, then ſay, —— *contrary to the ſtatute made in the thirteenth year of the reign of his majeſty king* George *the third* "*For regulating the turnpike roads,*" &c.

If it is for default in performing ſtatute duty, then, in deſcribing the offence, ſtate the duty required, and the notice given for that purpoſe, and the neglect, according to the fact, and as near to the words of the act as may be.

b. Summons of an offender.

Middleſex, { To A. O. of ——

WHEREAS *complaint and information hath been made upon oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, by* A. I. *of* ——— *That* [Here ſtate the nature and circumſtances of the caſe, as far as it ſhall be neceſſary to ſhew the offence, and to bring it within the authority of the juſtice, and in doing that, follow the words of the act as near as may be] *Theſe are therefore to require you perſonally to appear before me* (or, *the juſtices to be aſſembled at their ſpecial ſeſſions to be holden*) *at* ——— *in the ſaid county, on the* —— *day of* —— *next, at the hour of* —— *in the* ———*noon, to anſwer to the ſaid complaint and information made by the ſaid* A. I. *who is likewiſe directed to be then and there preſent, to make good the ſame. Herein fail not. Given under my hand and ſeal, this* —— *day of* —— 1774.

c. Form of a conviction.

Middleſex. BE *it remembred, that on the* —— *day of* —— *in the year of our Lord* 1774, *at* —— *in the county aforeſaid,* A. I. *came before me* J. P. *eſquire,*

esquire, one of his majesty's justices of the peace of the said county, and informed me, that A. O. *of —— on the —— day of —— now last past, at —— in the said county, did* [Here set forth the fact in the manner described by the statute] *Whereupon the said* A. O. *after being duly summoned to answer the said charge, appeared before me on the —— day of —— at —— in the said county, and having heard the charge contained in the said information, declared, that he was not guilty of the said offence: But the same being fully proved upon the oath of* A. W. *a credible witness, it manifestly appears to me the said justice, that he the said* A. O. *is guilty of the offence charged upon him in the said information. It is therefore considered and adjudged by me the said justice, that the said* A. O. *be convicted, and I do hereby convict him of the offence aforesaid; and I do hereby declare and adjudge that he the said* A. O. *hath forfeited the sum of —— of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given, &c.*

If the party doth not appear upon the summons, then, after the words—*being duly summoned to answer the said charge*, insert, *did not appear before me pursuant to the said summons*; or, *did neglect and refuse to make any defence against the said charge*; *but the same being fully proved, &c.*

If the party confesses the charge, then, after the words —*contained in the said information*, insert, *acknowledged and voluntarily confessed the same to be true, and it manifestly appears to me the said justice, &c.*

d. Order for payment of a forfeiture.

Middlesex. WHEREAS A. O. *of —— in the said —— is duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, for that he the said* A. O. [Here describe the offence as set forth in the information] *whereby he the said* A. O. *hath forfeited the sum of —— I do therefore hereby order the said* A. O. *to pay to* A. S. *surveyor of the —— the said sum of —— to be by him disposed of as the law directs. Given under my hand and seal the —— day of ——* 1774.

e. Warrant of diſtreſs for a forfeiture. (Not to be iſſued till after ſix days from ſervice of the order for payment.)

Middleſex. { To the conſtable of ——

WHEREAS A. O. *of* —— *in the ſaid county, yeoman, is duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *hath* [Here ſet forth the offence, deſcribing it particularly in the words of the ſtatute as near as may be] *contrary to the ſtatute in that caſe made and provided, by reaſon whereof the ſaid* A. O. *hath forfeited the ſum of —— to be diſtributed as herein is mentioned, which he hath refuſed to pay: Theſe are therefore, in his majeſty's name, to command you to levy the ſaid ſum of —— by diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of four days next after ſuch diſtreſs by you taken, the ſaid ſum, together with the reaſonable charges of taking and keeping the ſame, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of —— to* A. I. *of —— who informed me of the ſaid offence, and the other half of the ſaid ſum of —— to* A. S. *the ſurveyor of the highways for the —— of —— where the ſaid offence (neglect,* or, *default) happened, to be employed towards the repair of the ſaid highways* [or as the caſe ſhall be], *returning the overplus upon demand to him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods and chattels of the ſaid* A. O. *whereon to levy the ſaid ſum of —— that then you certify the ſame to me, together with this warrant. Given under my hand and ſeal, the —— day of —— 1774.*

If it is for a turnpike forfeiture, then ſay, —— *to* A. S. *ſurveyor of the turnpike road* (deſcribing it) —— *to be employed towards the repair of the ſaid road* ——

f. Conſta-

f. Conſtable's return of want of diſtreſs.

I A. C. *conſtable of the——of——in the county of——do hereby certify and make oath, that by virtue of this warrant, I have made diligent ſearch for the goods of the within named——and that I can find no ſufficient goods whereon to levy the within ſum of——As witneſs my hand the——day of——*1774.

Sworn before me the day and year &c. J. P. A. C.

g. Commitment for want of diſtreſs.

Middleſex. { To the conſtable of——in the ſaid county, and to the keeper of the common gaol [or, houſe of correction] at —— in the ſaid county.

WHEREAS A.O. *of——in the ſaid county, yeoman, was on the——day of——convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. [Here ſet forth the offence] *contrary to the ſtatute made in the thirteenth year of the reign of his majeſty king* George *the third* "*For the amendment and preſervation of the highways*" [If it is a turnpike offence, then ſay, "*For regulating the turnpike roads*"] *by reaſon whereof the ſaid* A. O. *hath forfeited the ſum of——And whereas on the——day of——in the year aforeſaid, I did iſſue my warrant to the conſtable of——to levy the ſaid ſum of——by diſtreſs and ſale of the goods and chattels of him the ſaid* A. O. *and to diſtribute the ſame according to the directions of the ſaid ſtatute: And whereas it duly appears to me upon the oath of the ſaid* (conſtable) *that he the ſaid——hath uſed his beſt endeavours to levy the ſaid ſum on the goods and chattels of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be had whereon to levy the ſame: Theſe are therefore to command you the ſaid conſtable of——aforeſaid, to apprehend the ſaid* A. O. *and him ſafely to convey to the common gaol* [or, *houſe of correction*] *at——in the ſaid county, and there deliver him to the keeper thereof, together with this precept. And I do hereby alſo command you the ſaid keeper, to receive and keep in your cuſtody the ſaid* A. O. *for the ſpace of three months, unleſs the ſaid ſum ſhall be ſooner paid,*

paid, purſuant to the ſaid conviction and warrant; and for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the —— day of —— in the year of our Lord ——

In caſe of a commitment for want of payment of money due on an aſſeſſment, it muſt be,——*to receive and keep in your cuſtody, until he ſhall have paid the ſaid ſum of——and the further ſum of —— being the coſts and charges occaſioned by his neglect in paying the ſame.*

h. Notice of appeal.

A. B. *Take notice, that I intend to appeal to the next general quarter ſeſſions of the peace, to be holden for the county of —— againſt an order* [*conviction*, or other proceeding as the caſe may be, particularly ſpecifying the purport of ſuch order, &c. and aſſigning the grievance and cauſe of complaint.] *Dated the —— day of ——* 1774.

C. D.

i. Order of turnpike truſtees for erecting a weighing engine.

AT *a meeting of the truſtees under an act paſſed in the—— year of the reign of —— for* [Here recite the principal part of the title of the particular act] *held at —— the —— day of ——* 1774.

In purſuance of the powers given to us by an act paſſed in the thirteenth year of the reign of his majeſty king George *the third "for regulating the turnpike roads," we do hereby order, that an engine proper for the weighing of carriages, of the conſtructions and weights ſpecified in the ſaid act, be forthwith erected at or as near as conveniently may be to the toll gate or bar now erected upon the ſaid turnpike road at —— and that* A. B, *the treaſurer (clerk, or, ſurveyor) of the ſaid turnpike road do contract with ſome proper perſon* (or, *with C. D.* in caſe the truſtees ſhall think fit to name the perſon) *for the making and erecting ſuch engine, and do inſpect and take care that the ſame is properly done. And we do order the gate keeper at the ſaid gate or bar for the time being to attend the ſaid weighing engine, and carefully to weigh all carriages paſſing, loaded upon the ſaid road, at the place where ſuch engine ſhall be erected, together with the loading thereof, and to take the ſeveral additional tolls or rates for overweight, and give tickets of the weight of ſuch carriages*

and loading, when required by the driver thereof, according to the directions of the ſaid act; and alſo to enter in a ſeparate book, to be kept by him for that purpoſe, an account of every carriage ſo weighed, which ſhall, with the loading, exceed the weights allowed by the ſaid act, and account to us for the money received for all ſuch overweight. Given under our hands———

k. Allowance of an increaſed number of horſes drawing up a ſteep hill.

AT a meeting of the truſtees of a turnpike road, under an act paſſed in the———year of the reign of——— for [Here ſtate the principal part of the title of the act] *held at———the———day of———*1774.

It appearing to us, upon the oath of——being a perſon experienced in levelling, that the riſe of part of a certain hill, upon the ſaid turnpike road, lying in the pariſh of——called or known by the name of——between the poſt marked "Put on," *and the poſt marked* "Take off," *being——yards in length, is above four inches in a yard; we do hereby allow to be drawn up the ſaid hill, between the poſts abovementioned, waggons having the ſoles or bottom of the fellies of the wheels of the breadth of* 9 *inches with———horſes, and carts having the like wheels with ——horſes; and waggons having wheels of the breadth of* 6 *inches with——horſes, and carts having the like wheels with ——horſes; and waggons having wheels of leſs breadth than* 6 *inches with——horſes, and carts having the like wheels with —— horſes.*

If the whole riſe be upon an average more than 4 inches in a yard, then ſay,——*that the riſe of a certain hill——is upon an average above four inches———*

l. Certificate thereof to the ſeſſions.

I A. C. *clerk to the truſtees mentioned in the above order, do hereby certify to the juſtices of the peace for the——of—— at their general quarter ſeſſions of the peace, that the above is a true copy of the order made by the ſaid truſtees for the purpoſes therein mentioned. Dated this——day of———*1774.

m. Notice of contracting for materials.

NOTICE is hereby given, that A. S. *ſurveyor of the turnpike road lying between——and——will, on the ——day of——next, at the hour of——in the——noon, let*

the getting of——cart loads of gravel, [or,——*of ſtone*], *to be got at a pit at——for the uſe of the ſaid turnpike road, and will alſo let the carriage of the ſaid gravel* [or *ſtone*] *from the ſaid pit to——where the ſame is to be uſed and employed upon the ſaid turnpike road. And all perſons deſirous of entering into a contract with the ſaid ſurveyor, either for getting or carrying the ſaid materials, are deſired to attend at the time and place before mentioned. Dated this——day of——*1774.

n. Agreement with perſons obliged to particular repairs.

AT *a meeting of the truſtees of the turnpike roads under an act paſſed in the——year of the reign of——for* [Here ſtate the principal part of the title of the act] *held at——the——day of——*1774.

Whereas A. B. *of——is liable by tenure* (or as the caſe ſhall be) *to the repair of a certain highway leading between——and——of the length of——yards or thereabouts, and the ſaid highway being now made turnpike road by virtue of the ſaid act, will occaſion a greater expence to make and keep the ſame in proper repair, than would have been neceſſary if no ſuch act had been obtained; and the ſaid* A. B. *attending this meeting in perſon* (or, *by* C. D. *his attorney or agent authorized to treat in that behalf*), *the ſaid truſtees and the ſaid* A. B. *&c. in purſuance of a power given by an act paſſed in the* 13*th year of the reign of king* George *the third "For regulating turnpike roads" have, in order to put and keep the ſaid road in proper condition and repair, come to the following agreement,* viz. *That the ſaid truſtees ſhall, on or before the——day of——next, pay and allow the ſum of——out of the tolls ariſing upon the ſaid turnpike roads, towards putting the ſaid road into proper repair, to be laid out and expended by the ſurveyor of the ſaid turnpike road; and that the ſaid* A. B. *ſhall advance and pay into the hands of the treaſurer of the ſaid turnpike road, on or before the——day of——next, the ſum of——to be alſo laid out and expended by the ſaid ſurveyor in the repair of the ſaid road: And that from and after the——day of——next, the ſaid turnpike road ſhall be kept in repair by the ſaid truſtees out of the ſaid tolls as aforeſaid, ſo long as the ſaid turnpike act ſhall continue, upon the ſaid* A. B. *paying into the hands of their treaſurer the ſum of——upon the——day of——every year; which the ſaid* A. B. *doth hereby for himſelf and his heirs agree to pay accordingly, ſo long as the ſaid road ſhall be ſo repaired by the ſaid truſtees as aforeſaid.*

Or the ſame precedent may be varied according to circumſtances.

o. Order

6. Order for the repair of a new highway.

Middleſex. WE *two of his majeſty's juſtices of the peace for the ſaid county, acting within the* (hundred) *of* ——— *in the ſaid county, having (at the requeſt of the parties intereſted in the repair of part of the highway* [or, *turnpike road*] *hereafter mentioned, who could not agree about the repair thereof) viewed a certain part of the highway* (or, *turnpike road*) *deſcribed in the plan hereunto annexed of the length of* ——— *yards, which hath been ſet out and appropriated for a new highway* (or, *turnpike road*) *between* ——— *and* ——— *in lieu of an old highway* (or, *turnpike road*) *which hath been ordered to be ſtopped up*; *and having alſo viewed the ground where the ſaid old highway was ſituated, and having ſummoned the ſurveyor of the ſaid new highway* (or, *turnpike road*), *and alſo* A. B. *who was liable by tenure*, &c. [If the old road laid in a different pariſh, and was to be repaired by the inhabitants, then ſay, *and alſo the ſurveyor of the pariſh of* ———*where the ſaid old road lay, who were liable to the repair of the ſaid old highway* (or, *turnpike road*)] *to appear before us this day*; *and having heard what has been alledged touching the repair of the ſaid part of the ſaid highway* (or, *turnpike road*), *and having fully conſidered the ſame, and all the circumſtances of the caſe*; *We think it juſt and reaſonable, and do hereby order and adjudge, that the ſaid* A. B. (or, *the inhabitants of the ſaid pariſh &c.*) *ſhall from time to time repair, and keep in repair, the whole* (or, *a part*) *of the ſaid highway, from* ———*to* ———*containing* ———*yards in length, at each end whereof we have cauſed a poſt, or ſtone, to be placed, to aſcertain the extent thereof. Given under our hands and ſeals this* ———*day of* ——— 1774.

If it be agreed by the conſent of parties, to pay a ſum in groſs in lieu of ſuch repairs, then, after the word *adjudge*, inſert, *by and with the conſent of the ſaid* A. B. *ſignified by his ſubſcribing his name to this order* (or, *by the conſent of the inhabitants of the ſaid pariſh of*——*ſignified in writing at a veſtry or other public meeting, a copy whereof is here under written) that the ſaid* A. B. (or, *the inhabitants*———) *is* (or, *are) liable to repair part of the ſaid new highway*; *and that if he* (or, *they) ſhall, on or before the* ——— *day of*——— *next, pay to the ſurveyors of the highways of the ſaid pariſh of* ——— [if it is not turnpike road; but if it be turnpike road, then ſay, *to the treaſurer of the ſaid turnpike road*] *the ſum of*———*he the ſaid* A. B. *and his heirs* (or, *the ſaid*

inhabitants and their ſucceſſors) ſhall be for ever acquitted and diſcharged from the burden and obligation to repair the ſaid new highway or any part thereof.

p. Agreement of the inhabitants to pay a groſs ſum, to be diſcharged from the repair of a particular road.

WE *whoſe names are ſubſcribed, being a majority of the inhabitants of the—— of ——aſſembled this—— day of——at a veſtry or public meeting held purſuant to notice duly given, for the purpoſes of conſulting about an agreement to be made concerning the repair of part of a highway* (or, *turnpike road) within the ſaid—— of —— do conſent and agree to pay the ſum of——to be abſolutely exonerated and diſcharged from all future repairs of the ſaid highway* (or, *turnpike road).*——If an annual payment be agreed upon, then ſay, *to pay annually the ſum of*——

q. Order for tranſferring ſtatute turnpike duty to other roads.

Middleſex. AT *a a ſpecial ſeſſions held by juſtices of the peace for the ſaid county, acting in the hundred of——within the ſaid county, at——on the——day of* ——1774.

Whereas application and complaint upon oath hath been made unto us, by A. B. *ſurveyor of the* (pariſh, &c.) *of——that the ſeveral highways, not being turnpike, within the ſaid—— are very extenſive, and in bad repair, and that a conſiderable part of the ſtatute duty ariſing within the ſaid——hath been called forth, and required to be applied in the repair of certain turnpike roads lying within the ſaid——which are in good condition, and have a conſiderable revenue for their ſupport, ariſing from the tolls collected thereupon: And we having duly ſummoned* C. D. *the ſurveyor of the ſaid turnpike road, to appear before us, to ſhew cauſe why the ſaid ſtatute duty, called forth and applied by him to the repair of the ſaid turnpike road, ſhould not be withdrawn therefrom, and applied to the repair of the other highways within the ſaid——; and upon hearing the ſaid* C. D. *and receiving an account of the revenues and debts of the ſaid turnpike road, and of the ſtate and condition of the repair of the ſaid turnpike road and highway reſpectively; and it appearing to us, upon full conſideration had thereupon, that part of the ſtatute duty hitherto employed by the ſaid——for the repair of the ſaid turnpike road, may be conveniently diſpenſed with,*

with, without indangering the ſecurities for the money advanced upon the credit of the tolls thereof; and that ſuch ſtatute duty is wanted for the repairs of the other highways within the ſaid ——; *we, in purſuance of the power given to us by the act paſſed in the thirteenth year of the reign of king* George *the third* "*For regulating turnpike roads,*" *do order, that from and after the*——*day of* ——*next, there ſhall be only*——*days ſtatute duty performed by the inhabitants of the ſaid*——*upon the ſaid turnpike road within the ſame, and that the remainder of the ſtatute duty ſhall be performed upon the other highways within the ſaid*——.

r. Notice for letting tolls.

NOTICE *is hereby given, that the tolls ariſing at the toll gate upon the turnpike road at*——*called or known by the name of the*——*gate, will be let by auction to the beſt bidder, at the houſe of*——*at*——*on the*——*day of*——*next, between the hours of*——*and*——*in the manner directed by the act paſſed in the thirteenth year of the reign of his majeſty king* George *the third* "*For regulating the turnpike roads;*" *which tolls produced the laſt year the ſum of*——*above the expences of collecting them, and will be put up at that ſum. Whoever happens to be the beſt bidder muſt at the ſame time give ſecurity, with ſufficient ſureties, to the ſatisfaction of the truſtees of the ſaid turnpike road, for payment of the rent agreed for, and at ſuch times as they ſhall direct.*

A. C. *clerk to the truſtees of the ſaid turnpike road.*

Highwaymen. See **Robbery.**

Homicide.

HOMICIDE in law ſignifies the killing of a man by a man. 1 *Haw.* 66.

And it includes in it, not only petit treaſon, concerning which ſee title **Treaſon**; but alſo the ſeveral offences which are treated of in the following ſections.

There is alſo another kind of untimely death of a man, not properly homicide: When he is killed by a horſe, a cart, a tree, or the like, and not by a man; which is called caſual death; for which ſee title **Deodand.**

I. Juſtifiable homicide.
II. Homicide by miſadventure.
III. Homicide by ſelf defence.
IV. Manſlaughter.
V. Murder.
VI. Self-murder.

I. Juſtifiable homicide.

On a real neceſſity.

1. To make homicide juſtifiable, it muſt be owing to ſome unavoidable neceſſity, to which the perſon who kills another muſt be reduced, without any manner of fault in himſelf. 1 *Haw.* 69.

And there muſt be no malice coloured under pretence of neceſſity; for wherever a perſon who kills another, acts in truth upon malice, and takes occaſion from the appearance of neceſſity to execute his own private revenge, he is guilty of murder. 1 *Haw.* 69.

Killing robbers and burglars.

2. If any evil diſpoſed perſon ſhall attempt felonioufly to rob or murder any perſon in any dwelling houſe or highway, or felonioufly attempt to break any dwelling houſe in the night time, and ſhall happen in ſuch felonious intent to be ſlain; the ſlayer ſhall be diſcharged, and ſhall forfeit no lands nor goods. 24 *H.* 8. *c.* 5.

Treſpaſſers in parks.

3. If treſpaſſers in a foreſt, chaſe, park, or warren, or any incloſed ground wherein deer are kept, will not render themſelves to the keepers, upon a hue and cry made to ſtand to the king's peace, but fly from, or defend themſelves againſt them, they may be ſlain by them. 1 *Haw.* 71.

Rioters.

4. If rioters, or forcible enterers or detainers, ſtand in oppoſition to the juſtices lawful warrrant, and any of them is ſlain; it is no felony. *Hale's Pl.* 37.

Houſeburners.

5. If a man comes to burn my houſe, and I ſhoot out of my houſe, or iſſue out of my houſe, and kill him; it is no felony. *Hale's Pl.* 39.

Raviſhers.

6. If a woman kill him that aſſaulteth to raviſh her; it is no felony. *Hale's Pl.* 39.

Felons refuſing to be arreſted.

7. If a perſon having actually committed a felony, will not ſuffer himſelf to be arreſted, but ſtands on his own defence, or flies, ſo that he cannot poſſibly be apprehended alive by thoſe who purſue him, whether private perſons, or publick officers, with or without a warrant from a magiſtrate; he may be lawfully ſlain by them. 1 *Haw.* 70.

8. So

8. So if a felony hath actually been committed, and an officer or miniſter of juſtice, having lawful warrant ſo to do, arreſt an innocent perſon, and ſuch perſon aſſault the officer or miniſter of juſtice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwiſe avoid it, but in ſtriving kill him, it is no felony. And in that caſe, the officer or miniſter of juſtice ſhall forfeit nothing; but the party who ſo aſſaulted or offered to fly away, and is killed, ſhall forfeit his goods. 3 *Inſt.* 56. Suſpected felon refuſing to be arreſted.

9. Alſo if a perſon arreſted for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwiſe take him. But in this caſe likewiſe, there muſt have been a felony actually committed. *Hale's Pl.* 36, 37. Felon eſcaping.

10. Alſo if a criminal endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. Felon breaking gaol.

11. In civil cauſes: Although the ſheriff cannot kill a man who flies from the execution of a civil proceſs; yet if he reſiſt the arreſt, the ſheriff or his officer need not give back, but may kill the aſſailant. *Hale's Pl.* 37. Reſiſting a civil proceſs.

So if in the arreſt and ſtriving together, the officer kill him, it is no felony. *Hale's Pl.* 37.

12. In all theſe caſes the party upon arraignment having pleaded not guilty, the ſpecial matter muſt be found; whereupon the party ſhall be diſmiſſed, without any forfeiture, or pardon purchaſed. *Hale's Pl.* 38. Trial and diſcharge.

II. Homicide by miſadventure.

1. I have purpoſely avoided the word *chancemedley* in this place, becauſe authors do not ſeem to be agreed whether it it is to be applied to homicide *by miſadventure*, or to *manſlaughter*. Ld. *Coke* and Mr. *Hawkins* ſeem to underſtand it of *manſlaughter*; Ld. *Hale*, and others, of homicide *by miſadventure*. The original meaning of the word ſeems to favour the former opinion, as it ſignifies a ſudden or caſual meddling or contention; whereas homicide *by miſadventure* ſuppoſeth no previous meddling or falling out. But the ſame author ſometimes in different places, applies it to both of them promiſcuouſly. Chancemedley.

2. Homicide by miſadventure is, where a man is doing a lawful act, without intent of hurt to another, and death caſually enſues. *Hale's Pl.* 31. What is homicide by miſadventure.

3. As where a labourer being at work with a hatchet, the head flies off, and kills one who ſtands by. 1 *Haw.* 73. Caſes of homicide by miſadventure.

4. Or where a third perſon whips a horſe, on which a man is riding, whereupon he ſprings out and runs over a child, and kills him; in which caſe the rider is guilty of homicide by miſadventure, and he who gave the blow of manſlaughter. 1 *Haw.* 73.

5. But if a perſon riding in the ſtreet whip his horſe to put him into ſpeed, and run over a child and kill him, it is homicide and not by miſadventure; and if he ride ſo, in a preſs of people, with intent to do hurt, and the horſe killeth another, it is murder in the rider. 1 *H. H.* 476.

6. If a perſon drives his cart careleſsly, and it runs over a child in the ſtreet, if he have ſeen the child, and yet drives on upon him, it is murder; but if he ſaw not the child, yet it is manſlaughter; but if the child had run croſs the way, and the cart run over the child before it was poſſible for the carter to make a ſtop, it is by miſadventure. 1 *H. H.* 476.

7. So where workmen throw ſtones, rubbiſh, or other things, from an houſe, in the ordinary courſe of their buſineſs, by which a perſon underneath happens to be killed; if they look out and give timely warning to thoſe below, it will be homicide by miſadventure; if without ſuch caution, it will amount to manſlaughter at leaſt, it was a lawful act, but done in an improper manner. It is ſaid by ſome, that if this be done in the ſtreets of *London*, or other populous towns, it will be manſlaughter notwithſtanding the caution above mentioned. But this will admit of ſome limitation. If it be done early in the morning, when few or no people are ſtirring, and the ordinary caution is uſed, it ſeemeth that the party is excuſable. But when the ſtreets are full, that will not ſuffice; for in the hurry and noiſe of a crouded ſtreet, few people hear the warning, or ſufficiently attend to it. *Foſt.* 262, 263.

8. It is ſaid before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. And if a perſon, meaning to ſteal a deer, in another man's park, ſhooteth at the deer, and by the glance of the arrow killeth a boy, that is hidden in a buſh; this is murder, for that the act was unlawful, altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had ſhot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by miſadventure, and no felony. 3 *Inſt.* 56.

9. So if any one ſhoot at any wild fowl upon a tree, and the arrow killeth any reaſonable creature afar off, without

without any evil intent in him, this is by misadventure; for it was not unlawful to shoot at the wild fowl. But if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a man; if his intention was to steal the poultry (which must be collected from circumstances), it will be murder by reason of that felonious intent; but if it was done wantonly, and without that intention, it will be barely manslaughter. *Foſt.* 258, 9.

10. The rule before laid down supposeth, that the act from which death ensued, was *malum in se*. For if it was barely *malum prohibitum*, as shooting at game by a person not qualified by statute law to keep or use a gun for that purpose; the case of a person so offending, will fall under the same rule as that of a qualified man. For the statutes prohibiting the destruction of the game, under certain penalties, will not in a question of this kind enhance the accident beyond its intrinsick moment. *Foſt.* 259.

11. Further, if there be an evil intent, tho' that intent extendeth not to death, it is murder. Thus, if a man, knowing that many people are in the street, throw a stone over a wall, intending only to fright them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, tho' that intent extended not to death, and tho' he knew not the party slain. 3 *Inſt.* 57.

12. And it is a general rule, in case of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw.* 74.

13. But in all the cases above, if it doth only hurt a man, by such an accident, it is nevertheless a trespass; and the person hurt shall recover his damages; for tho' the chance excuse from felony, yet it excuseth not from trespass. 1 *H. H.* 472.

14. If a person escape that hath killed another by misadventure, the town shall be amerced. 2 *Inſt.* 149. Escape.

15. This homicide is not felony, because it is not accompanied with a felonious intent, which is necessary in every felony. 1 *Haw.* 75. This kind of homicide no felony.

16. But yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes. 1 *Haw.* 75. Bail.

But if he is taken only on a slight suspicion, the justices of the peace may bail him. 2 *Haw.* 105.

17. Altho'

Forfeiture.

17. Altho' this homicide is not properly a man's crime, but his misfortune; yet becauſe the king hath loſt his ſubject, and in reſpect of the great favour the law hath to the life of man, and to the end that men ſhould uſe all care, diligence, and circumſpection in all they do, that no hurt ſhould come of their actions, a perſon convicted hereof ſhall forfeit his goods, and ſhall not preſently be diſcharged of his impriſonment, but bailed, that he may ſue out his pardon, which he ſhall have out of the chancery of courſe. 1 *H. H.* 477, 492. 1 *Haw.* 76.

III. Homicide by ſelf-defence.

Se defendendo, what.

1. Homicide in a man's own defence ſeems to be, where one who hath no other poſſible means of preſerving his life from one who combats with him on a ſudden quarrel, kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. 1 *Haw.* 75.

Caſes of ſe defendendo.

2. And not only he, who upon an aſſault retreats to a wall, or ſome ſuch ſtrait, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable neceſſity; but alſo he, who being aſſaulted in ſuch a manner, and in ſuch a place, that he cannot go back without manifeſtly indangering his life, kills the other without retreating at all. 1 *Haw.* 75.

3. And notwithſtanding a perſon who retreats from an aſſault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *ſe defendendo* only. 1 *Haw.* 75.

4. But if the mortal wound was firſt given, then it is manſlaughter. *Hale's Pl.* 42.

5. And an officer who kills one that reſiſts him in the execution of his office, and even a private perſon that kills one who felonioufly aſſaults him in the highway, may juſtify the fact, without ever giving back at all. 1 *Haw.* 75.

6. But if a perſon upon malice *prepenſe* ſtrike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42.

Acceſſaries.

7. Hereof there can be no acceſſaries, either before or after the act, becauſe it is not done with a felonious intent, but upon inevitable neceſſity. 3 *Inſt.* 56.

Eſcape.

8. If a man eſcape, that hath killed another in his own defence, the town ſhall be amerced. 2 *Inſt.* 315.

Bail.

9. A perſon guilty hereof is not bailable by juſtices of the peace; but they muſt commit him till the aſſizes. 1 *Haw.* 76.

But

But otherwiſe it is, if he is taken only on a ſlight ſuſpicion. 2 *Haw.* 105.

10. Lord *Coke* (2 *Inſt.* 316.) ſays, that the juſtices of the peace cannot take an indictment of killing a man *ſe defendendo*; becauſe their commiſſion is not general, as is that of the juſtices of gaol delivery, but limited: But lord *Hale* (2 *H. H.* 46.) holds the contrary. Power of juſtices of the peace.

11. A perſon convicted hereof, ſhall not be diſcharged out of priſon but upon bail, and ſhall forfeit all his goods, altho' the cauſe was inevitable. And this becauſe of the great regard which the law hath for the life of man; and alſo by reaſon that the law intends it had a beginning upon an unlawful cauſe: for quarrels are not preſumed to grow without ſome wrongs in words or deeds, and ſo malice on both ſides. But he ſhall have his pardon out of the chancery of courſe. 3 *Inſt.* 56. 1 *Haw.* 76. Forfeiture.

12. If a man be indicted for homicide *ſe defendendo*, and is found not guilty, yet if it be found that he fled for the ſame, he ſhall forfeit his goods for ſuch flight, in not ſtanding to the law of the land. 1 *H. H.* 493. Flight.

IV. Manſlaughter.

1. By manſlaughter is to be underſtood ſuch killing of a man as happens either on a ſudden quarrel, or in the commiſſion of an unlawful act, without any deliberate intention of doing any miſchief at all. 1 *Haw.* 76. Manſlaughter, what.

2. There is no difference between murder and manſlaughter, but that murder is upon malice forethought, and manſlaughter upon a ſudden occaſion. As if two meet together, and ſtriving for the wall, the one kill the other, this is manſlaughter and felony. And ſo it is, if they had upon that ſudden occaſion gone into the field and fought, and the one had killed the other, this had been but manſlaughter, and no murder; becauſe all that followed was but a continuance of the firſt ſudden occaſion, and the blood was never cooled, till the blow was given. 3 *Inſt.* 55. Without malice.

3. There can be no acceſſaries to this offence before the fact, becauſe it muſt be done without premeditation. 1 *Haw.* 76. Acceſſaries.

But there may be acceſſaries after the fact. 3 *Inſt.* 55.

4. This offence is not bailable by juſtices of the peace. 3 *Ed.* 1. *c.* 15. Bail.

5. It is within the benefit of clergy; but the offender ſhall forfeit as in other felonies. 2 *H. H.* 344. Clergy.

6. But there is one kind of manſlaughter, which by the ſtatute of the 1 *J. c.* 8. is excluded the benefit of Stabbing.

clergy; *viz.* He who ſhall ſtab or thruſt any perſon that hath not then any weapon drawn, or hath not then ſtricken firſt, ſo as the perſon ſo ſtabbed or thruſt ſhall die thereof in ſix months, altho' it cannot be proved that the ſame was done of malice forethought, ſhall be guilty of felony without benefit of clergy.

V. Murder.

Murder, what. 1. Murder is, when a man of ſound memory, and of the age of diſcretion, unlawfully killeth any perſon under the king's peace, with malice forethought, either expreſſed by the party, or implied by law; ſo as the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 *Inſt.* 47.

Caſes of murder. 2. By *malice expreſſed*, is meant, a deliberate intention of doing any bodily harm to another, whereunto by law a perſon is not authorized. 1 *H. H.* 451.

And the evidences of ſuch a malice muſt ariſe from external circumſtances diſcovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compaſſings, and the like; which are various, according to variety of circumſtances. 1 *H. H.* 451.

3. *Malice implied* is in ſeveral caſes: as when one voluntarily kills another, without any provocation; for in this caſe the law preſumes it to be malicious, and that he is a publick enemy of mankind. 1 *H. H.* 455, 456.

4. Poiſoning alſo implies malice, becauſe it is an act of deliberation. 1 *H. H.* 455.

5. Alſo when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 *H. H.* 457.

6. Alſo where a priſoner dieth by dureſs of the gaoler, the law implies malice, by reaſon of the cruelty. 3 *Inſt.* 52.

7. And in general, any formed deſign of doing miſchief may be called malice, and therefore not ſuch killing only as proceeds from premeditated hatred or revenge againſt the perſon killed, but alſo in many other caſes, ſuch as is accompanied with thoſe circumſtances that ſhew the heart to be perverſely wicked, is adjudged to be of malice *prepenſe*, and conſequently murder. 2 *Haw.* 80. *Strange* 766.

For when the law makes uſe of the term *malice aforethought*, as deſcriptive of the crime of murder, it is not to be underſtood in that narrow reſtrained ſenſe to which the modern uſe of the word *malice* is apt to lead one, *a principle of malevolence to particulars*; for the law by the term

term *malice (malitia)* in this inſtance meaneth, that the fact hath been attended with ſuch circumſtances, as are the ordinary ſymptoms of a wicked heart, regardleſs of ſocial duty, and fatally bent upon miſchief. *Foſt.* 256, 7.

8. And wherever it appears that a man killed another, it ſhall be intended *prima facie* that he did it maliciouſly, unleſs he can make out the contrary, by ſhewing that he did it on a ſudden provocation, or the like. 1 *Haw.* 82.

9. Alſo wherever a perſon in cool blood, by way of revenge, beats another in ſuch a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone ſo far. 1 *Haw.* 83.

10. And it ſeems to be agreed, that no breach of a man's word or promiſe, no treſpaſs either to lands or goods, no affront by bare words or geſtures, however falſe or malicious it may be, and aggravated with the moſt provoking circumſtances, will excuſe him from being guilty of murder, who is ſo far tranſported thereby, as immediately to attack the perſon who offends him, in ſuch a manner as manifeſtly endangers his life, without giving him time to put himſelf upon his guard, if he kills him in purſuance of ſuch an aſſault, whether the perſon ſlain did at all fight in his defence or not. 1 *Haw.* 82.

11. If a man by harſh and unkind uſage put another into ſuch a paſſion of grief or fear, that the party either die ſuddenly, or contract ſome diſeaſe whereof he dies, though this may be murder or manſlaughter in the ſight of God, yet in a human judicature it cannot come under the judgment of felony, becauſe no external act of violence was offered, whereof the law can take notice. 1 *H. H.* 429.

12 If two fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice prepenſed; for the fetching of the weapon, and going into the field, is but a continuance of the ſudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay though it were the ſame day, if there were ſuch a competent diſtance of time, that in common preſumption, they had time of deliberation, then it is murder. 3 *Inſt.* 51. 1 *H. H.* 453.

13. And the law ſo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but alſo his ſeconds, are guilty of murder, whether they fought or not. And it is holden, that the ſeconds of the party

party ſlain are likewiſe guilty as acceſſaries. 1 *Haw.* 82.

14. If a phyſician or ſurgeon gives a perſon a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a diſeaſe, and contrary to the phyſician or ſurgeon's expectation it kills him, this is no homicide. And lord *Hale* ſays, he holds their opinion to be erroneous, who think that if he be no licenſed ſurgeon or phyſician, that occaſioneth this miſchance, that then it is felony. Theſe opinions (he ſays) may caution ignorant people not to be too buſy in this kind in tampering with phyſick, but are no ſafe rule for a judge or jury to go by. 1 *H. H.* 429.

15. But if a woman be with child, and any gives her a potion to deſtroy the child within her, and ſhe take it, and it works ſo ſtrongly that it kills her, this is murder; for it was not given her to cure her of a diſeaſe, but unlawfully to deſtroy the child within her; and therefore he that gives her a potion to this end, muſt take the hazard, and if it kills the mother it is murder. 1 *H. H.* 430.

16. Alſo if a woman be quick with child, and by a potion or otherwiſe killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and ſhe is delivered of a dead child, this is a great miſpriſion, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cauſe, this is murder. 3 *Inſt.* 50.

Lord *Hale* ſays, that in this caſe it cannot legally be known, whether the child were killed or not; and that if the child die, after it is born and baptized, of the ſtroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. *Dalton* ſays, whether it die within her body, or ſhortly after her delivery, it maketh no difference. *Dalt.* 332. But Mr. *Hawkins* ſays, that (in this latter caſe) it ſeems clearly to be murder, notwithſtanding ſome opinions to the contrary. 1 *Haw.* 80.

17. Alſo it ſeems agreed, that where one counſels a woman to kill her child when it ſhall be born, who afterwards doth kill it in purſuance of ſuch advice, he is an acceſſary to the murder. 1 *Haw.* 80.

18. By the 21 *J. c.* 27. If a woman be delivered of a baſtard child, and ſhe endeavour privately, either by drowning or ſecret burying thereof, or any other way, either by herſelf, or the procuring of others, ſo to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; ſhe ſhall ſuffer death as in caſe of murder, except ſhe can prove by one witneſs that it was born dead.

19. Lord

19. Lord *Hale* ſays, if a man have a beaſt, as a bull, cow, horſe, or dog, uſed to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it:

If he have no particular notice that it did any ſuch thing before, yet if it is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape, or a monkey, if it get looſe and do harm to any perſon, the owner is liable to an action for the damage:

If he have notice of the quality of any ſuch his beaſt, and uſe all due diligence to keep him up, yet he breaks looſe and kills a man, this is no felony in the owner, but the beaſt is a deodand.

But if he did not uſe that due diligence, but through negligence the beaſt goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manſlaughter in the owner:

But if he did purpoſely let him looſe or wander abroad, with deſign to do miſchief, nay though it were with deſign only to fright people and make ſport, and it kills a man, it is murder in the owner. 1 *H. H.* 431.

Perſons preſent when murder is committed.

20. They that are preſent when any man is ſlain, and do not their beſt endeavour to apprehend the murderer or manſlayer, ſhall be fined and impriſoned. 3 *Inſt.* 53.

Eſcape.

21. If a murder be committed in the day time, in a town not incloſed, and the murderer eſcape, the townſhip ſhall be amerced: but if incloſed, whether the murder be in the night or day, the town ſhall be amerced. 3 *Inſt.* 53.

Where the ſtroke is in one county, and the death in another.

22. Where any perſon ſhall be felonioufly ſtriken or poiſoned in one county, and die in another county; the offender may be indicted in the county where the party dies, before the coroner, juſtices of the peace, or other juſtices. 2 & 3 *Ed.* 6. *c.* 24. *ſ.* 2.

Where the principal committeth the offence in one county, and the acceſſary in another.

23. Where a murder is committed in one county, and a perſon is acceſſary in another county, he may be indicted in the county where he was acceſſary, on certificate of the conviction of the principal in the county where he committed the murder. 2 & 3 *Ed.* 6. *c.* 24. *ſ.* 4.

Where the ſtroke is in England, and the death out of England; and vice verſa.

24. If any perſon be felonioufly ſtriken or poiſoned upon the ſea, or out of *England*, and ſhall die of the ſame in *England*; or ſhall be felonioufly ſtriken or poiſoned in *England*, and ſhall die of the ſame on the ſea, or out of *England*; the offenders and acceſſaries may be indicted in the county where any ſuch death, ſtroke, or poiſoning ſhall happen, before the coroner, juſtices of the peace, or other

other juſtices; and the judges of aſſize, or any ſuperior court, to which the indictment ſhall be removed, ſhall proceed thereon accordingly. 2 *G.* 2. *c.* 21.

Trial, when.

25. If a man be ſlain or murdered, and the ſlayers, murderers, and acceſſaries be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they ſhall not be ſuffered to go at large, but be committed or bailed, till the year and day be paſt: and an appeal may be brought, notwithſtanding ſuch acquittal on indictment, if he hath not had his clergy. 3 *H.* 7. *c.* 1.

Judgment.

26. Sentence, in caſe of murder, ſhall be pronounced in open court immediately after conviction, unleſs the court ſhall ſee reaſonable cauſe for poſtponing the ſame; in which ſhall be expreſſed not only the uſual judgment of death, but alſo the time appointed for execution, and the marks of infamy directed for ſuch offenders. 25 *G.* 2. *c.* 37. *ſ.* 3.

How to be demeaned after Judgment.

27. And after conviction and judgment, the gaoler ſhall confine the priſoner to ſome cell, or other proper and ſafe place in the priſon, apart from the other priſoners; and no perſon, except the gaoler, or his ſervants, ſhall have acceſs to him, without a licence from the judge, ſheriff, or under ſheriff. But if the judge ſhall ſee cauſe to reſpite the execution, he may, during the time of ſuch ſtay, relax, or releaſe, by licence under his hand, any or all of the reſtraints or regulations before directed to be obſerved by the gaoler. 25 *G.* 2. *c.* 37. *ſ.* 6, 7.

And after ſentence, and until execution, the offender ſhall be fed with bread and water only (except in caſe of receiving the ſacrament; or of any violent ſickneſs or wound, in which caſe ſome known phyſician, ſurgeon, or apothecary may be admitted by the gaoler to adminiſter neceſſaries, his name and place of abode being firſt entred in the books of ſuch priſon). And if the gaoler ſhall offend againſt, or neglect to put in execution, any of the ſaid directions; he ſhall forfeit his office, and be fined 20*l*, and impriſoned till paid. *id. ſ.* 8.

Execution.

28. The execution of perſons found guilty of wilful murder, ſhall be on the day next but one after ſentence paſſed, unleſs it be *Sunday*, and in that caſe on the *Monday* following. 25 *G.* 2. *c.* 37. *ſ.* 1.

But if there ſhall appear reaſonable cauſe, the judge after ſentence pronounced, may ſtay the execution at his diſcretion. *id. ſ.* 4.

Reſcue.

29. And if any perſon ſhall by force ſet at liberty or reſcue, or attempt to ſet at liberty, or reſcue, any perſon

out of priſon, committed for, or found guilty of murder; or reſcue, or attempt to reſcue any ſuch perſon going to, or during execution; he ſhall be guilty of felony without benefit of clergy. 25 *G.* 2. *c.* 37. *ſ.* 9.

Body not to be buried.

30. The body, if in *London* or *Middleſex*, ſhall be immediately conveyed by the ſheriff, to the ſurgeons hall, or ſuch other place as the ſurgeons company ſhall appoint, to be by them diſſected and anatomized; and if elſewhere, ſhall be delivered to ſuch ſurgeon as the judge ſhall direct, for the purpoſe aforeſaid. 25 *G.* 2. *c.* 37. *ſ.* 2.

And the judge may direct the body to be hung in chains, or anatomized; but in no caſe whatſoever to be buried, unleſs after the ſame ſhall have been diſſected and anatomized. *ſ.* 5.

At a meeting of the judges to conſider of this act, there was ſome doubt whether hanging in chains might ever be made part of the ſentence; but on debate it was agreed by nine judges, that in all caſes within the act, the judgment for diſſection and anatomizing only ſhould be part of the ſentence: and if it ſhould be thought adviſable, the judge might afterwards direct the hanging in chains by ſpecial order to the ſheriff, purſuant to the power given by this clauſe. *Foſt.* 107.

Reſcuing the body.

31. And if after execution, any perſon ſhall by force reſcue, or attempt to reſcue the body; he ſhall be guilty of felony, and tranſported for ſeven years. 25 *G.* 2. *c.* 37. *ſ.* 10.

How far the acceſſary ſhall have his clergy.

32. The principal in murder is ouſted of clergy in all caſes, and the acceſſary before is alſo ouſted of clergy in all caſes, but the acceſſary after is in no caſe ouſted of clergy. 2 *H. H.* 344.

Navy.

33. All murders committed by any perſon in the fleet ſhall be puniſhed with death, by the ſentence of a court martial. 22 *G.* 2. *c.* 33. *art.* 28.

VI. Self-Murder.

Felo de ſe.

1. A *felo de ſe*, or felon of himſelf, is a perſon, who being of ſound mind, and of the age of diſcretion, voluntarily killeth himſelf. 3 *Inſt.* 54. 1 *H. H.* 411.

Year and day.

2. If a man give himſelf a wound, intending to be *felo de ſe*, and dieth not within the year and day after the wound, he is not *felo de ſe*. 3 Inſt. 54.

Non compos.

3. Mr. *Hawkins* ſpeaks with ſome warmth againſt an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himſelf muſt be *non*

compos of courſe; becauſe it is ſaid to be impoſſible, that a man in his ſenſes ſhould do a thing ſo contrary to nature, and all ſenſe and reaſon. But he argues, that if this doctrine were allowable, it might be applied in excuſe of many other crimes as well as this; as for inſtance, that of a mother murdering her child, which is alſo againſt nature and reaſon: and this conſideration inſtead of being the higheſt aggravation of a crime, would make it no crime at all; for it is certain a perſon *non compos mentis* can be guilty of no crime. 1 *Haw.* 67.

And lord *Hale* ſays, it is not every melancholy or hypocondriacal diſtemper, that denominates a man *non compos*, for there are few who commit this offence, but are under ſuch infirmities; but it muſt be ſuch an alienation of mind, as renders a perſon to be a madman, or frantick, or deſtitute of the uſe of reaſon, which will denominate him *non compos*. 1 *H. H.* 412.

Forfeiture. 4. The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land, without an attainder by courſe of law. 3 *Inſt.* 54.

Nor ſhall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the juſtices in ſeſſions may inquire thereof; for they have power by their commiſſion to inquire of all felonies; and a preſentment thereof found before them, intitles the king to the forfeiture. 3 *Inſt.* 54, 55. *Dalt. c.* 144.

But nevertheleſs, the forfeiture ſhall relate to the time of the wound given, and not to the time of the death, or of the inquiſition. 3 *Inſt.* 55. *Dalt. c.* 144. 1 *Hale's Pl.* 29. 1 *Haw.* 68.

But lord *Hale*, in his hiſtory of the pleas of the crown, ſeemeth to doubt, whether it ſhall not relate to the time of the death only, and not the time of the wound given. 1 *H. H.* 414.

Corruption of blood. 5. Nor doth the offence work any corruption of blood, or loſs of dower. 1 *Haw.* 68.

Burial. 6. By the rubrick in the book of common prayer, before the burial office (confirmed by act of parliament, 13 & 14 *C.* 2. *c.* 4.) a perſon who hath laid violent hands upon himſelf ſhall not have that office uſed at his interment.

But he ſhall be buried ignominiouſly in the highway, with a ſtake driven through his body. 4 *Black.* 190.

Hops. See Exciſe.

Horſes.

Horſes.

For the duties on horſes travelling poſt; ſee title Poſt.

I. Stealing of horſes.
II. Buying of ſtolen horſes.
III. Killing or maiming horſes in the night.
IV. Putting ſtoned horſes on commons.
V. Putting ſcabbed horſes on commons.

I. Stealing of horſes.

BY the 1 *Ed.* 6. *c.* 12. *ſ.* 10. No perſon or perſons convicted for felonioufly ſtealing of horſes, geldings, or mares, ſhall be admitted to enjoy the privilege of clergy.

And by the 2 & 3 *Ed.* 6. *c.* 33. Whereas there hath been ſome doubt upon the foregoing clauſe, whether a perſon convicted for felonioufly ſtealing of one horſe, gelding, or mare, ought to be admitted to enjoy the privilege of clergy, it is declared and enacted, that all and ſingular perſon and perſons feloniouſly taking or ſtealing any horſe, gelding, or mare, ſhall not be admitted to enjoy the privilege of clergy, but ſhall be put from the ſame.

The reaſon of which doubt is obvious; becauſe a penal ſtatute (and eſpecially where life is concerned) ought not to be extended beyond the expreſs words thereof, but to be taken ſtrictly in favour of the ſubject.

If they be ſtolen out of the ſtable or other curtilage of the dwelling houſe, in the night time, it falls under the denomination of *Burglary*; if in the day time, it falls under the denomination of *Larceny from the houſe*: And in either caſe, there is a reward of 40 l for convicting an offender, and an exemption from offices; as is ſet forth at large under the reſpective titles of *Burglary* and *Larceny*.

II. Buying of ſtolen horſes.

By the 2 & 3 *P. & M. c.* 7. and 31 *El. c.* 12. it is enacted as follows:

Horſe Fair. 1. The keeper of every fair and market ſhall yearly appoint a certain ſpecial and open place, where horſes ſhall be ſold in any fair or market overt.

Toll taker. 2. And ſhall appoint one or more perſons to take toll there, and to keep the ſame place from ten in the forenoon till ſun-ſet.

Horſe to be ſhewed one hour. 3. And the ſale or exchange in any fair or market overt, of any ſtolen horſe, ſhall not alter the property, unleſs the ſame ſhall be, in the time of the ſaid fair or market, openly ridden, led, walked, driven, or kept ſtanding, for one hour together at leaſt, between ten of the clock and ſun-ſet, in the open place of the fair or market, wherein horſes are commonly uſed to be ſold, and not within any houſe, yard, backſide, or other privy or ſecret place.

Seller and buyer to go to the toll taker. 4. Nor unleſs all the parties to the bargain ſhall come together, and bring the horſe to the open place appointed for the toll taker, or for the book keeper where no toll is due.

Sale to be entred. 5. Nor unleſs ſuch toll taker there, or (where no toll is paid) the book keeper or chief officer of the fair or market, ſhall take upon him perfect knowledge of the ſeller, and of his true chriſtian name and ſurname and place of abode, and ſhall enter all the ſame his knowledge in a book to be kept for that purpoſe, or elſe that the ſeller ſhall bring to the toll taker, or other officer aforeſaid, one credible perſon, that ſhall teſtify that he knoweth the ſeller, and his true name, ſurname, miſtery, and dwelling place, and there enter the ſame, and alſo the name, ſurname, miſtery, and dwelling place of him that ſo avoucheth his knowledge.

And the price. 6. Nor unleſs he alſo cauſe to be entred, the very true price.

And marks. 7. And alſo the colour, and one ſpecial mark at leaſt.

Toll to be paid. 8. And alſo the buyer to pay the toll, if any is due; if not, then to give 1 d for the entry.

Certificate of entry. 9. Which done, the perſon entring the ſame ſhall give to the buyer requiring and paying 2 d for the ſame, a note in writing of all the contents of ſuch entry ſubſcribed with his hand.

Penalties. 10. Every perſon offending in any of the premiſſes ſhall forfeit 5 l, half to the king, and half to him that ſhall ſue before

before the juſtices in ſeſſions, or in any ordinary court of record; and the ſale ſhall be void: and the owner may ſeize and take his horſe again, or have an action of detinue or replevin for the ſame.

11. And if any horſe ſhall be ſtolen, and after ſhall be ſold in open fair or market, and the ſale ſhall be uſed in all points as aforeſaid, yet nevertheleſs ſuch ſale in ſix months after the felony done, ſhall not take away the owner's property, ſo as claim be made in ſix months, where the horſe ſhall be found, before the mayor, if in a town corporate, or elſe before a juſtice near the place where found, and ſo as proof be made before ſuch magiſtrate in 40 days next enſuing by two witneſſes, thet the property of ſuch horſe was in the party claiming, and was ſtolen from him within ſix months next before ſuch claim; but the party from whom the ſame was ſtolen, may at all times after, notwithſtanding ſuch ſale, take again the ſaid horſe, on payment, or readineſs to offer to the party who hath poſſeſſion, ſo much as he ſhall ſwear before ſuch magiſtrate, that he paid for the ſame. Caſe where the horſe ſhall have been duly entred.

III. Killing or maiming horſes in the night.

1. By the 22 & 23 *C.* 2. *c.* 7. Where any perſon ſhall in the night time maliciouſly kill or deſtroy any horſes; he ſhall be guilty of felony, and may be tranſported, by three juſtices in ſeſſions, for ſeven years. Killing.

2. And if any perſon ſhall in the night time maliciouſly wound or hurt any horſes; he ſhall forfeit to the party grieved treble damages, to be recovered by action at law, or before three juſtices. Maiming.

IV. Putting ſtoned horſes on commons.

1. No perſon ſhall put in any foreſt, chaſe, moor, heath, common, or waſte (where mares or fillies are uſed to be kept) any ſtoned horſe above the age of two years, not being 15 hands high, within the ſhires and territories of *Norfolk*, *Suffolk*, *Cambridge*, *Buckingham*, *Huntingdon*, *Eſſex*, *Kent*, *South-Hampſhire*, *North-Wiltſhire*, *Oxford*, *Berkſhire*, *Worceſter*, *Glouceſter*, *Somerſet*, *North-Wales*, *South-Wales*, *Bedford*, *Warwick*, *Northampton*, *Yorkſhire*, *Cheſhire*, *Staffordſhire*, *Lancaſhire*, *Salop*, *Leiceſter*, *Hereford*, *and Lincoln*; nor under 14 hands in any other county (except *Cornwall*, 21 *J.* *c.* 28. *ſ.* 12), on pain of forfeiting the ſame. 32 *H.* 8. *c.* 13. *ſ.* 2, 10. Size.

But this ſhall not extend to the *marſhes* in the counties of *Cambridge*, *Huntingdon*, *Suffolk*, *Northampton*, *Lincoln*, and *Norfolk*; provided that the horſes be of 13 hands. 8 *El. c.* 8. *ſ.* 3.

Alſo nothing herein ſhall extend to any ſtoned horſe, that ſhall happen once in a year to break out of any paſture into ſuch common, ſo that he do not ſtay there above four days after notice given at the dwelling houſe of the owner, or after publication thereof on a *ſunday* or other feſtival, in the pariſh church where the owner or poſſeſſor of ſuch horſe dwelleth. 32 *H.* 8. *c.* 13. *ſ.* 5.

Seizing the ſame. 2. And any perſon may ſeize any ſuch horſe ſo being under ſize, in manner following: He ſhall go to the keeper of ſuch foreſt, or (out of ſuch foreſt) to the conſtable of the next town; and require him to go with him, to bring ſuch horſe to the next pound; and there to be meaſured by ſuch officer, in the preſence of three other honeſt men to be appointed by the officer; and if he ſhall be found contrary to what is above expreſſed, ſuch perſon may take him for his own uſe. 32 *H.* 8. *c.* 13. *ſ.* 3.

And if ſuch keeper, or conſtable, or other of the three perſons ſhall refuſe to do as is aforeſaid; he ſhall forfeit 40 s. *ſ.* 4.

Driving the common. 3. And all ſuch commons and other places ſhall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or conſtables, reſpectively, on pain of 40s; and they may alſo drive the ſame at any other time when they ſhall think meet. 32 *H.* 8. *c.* 13. *ſ.* 6.

And if in any of the ſaid drifts, there ſhall be found any mare, filly, fole, or gelding, that ſhall then be thought not able, nor like to grow to be able to bear foles of reaſonable ſtature, or to do profitable labours, by the diſcretion of the drivers, or of the more number of them; they may kill and bury them. *ſ.* 7.

Penalties. 4. All which ſaid forfeitures ſhall be half to the king, and half to him that ſhall ſue: and the juſtices in ſeſſions, and ſtewards of leets, may inquire thereof; and the ſteward ſhall certify his preſentments to the next ſeſſions. 32 *H.* 8. *c.* 13. *ſ.* 8.

V. Putting ſcabbed horſes on commons.

Scabbed. No perſon ſhall have, or put to paſture, any horſe, gelding, or mare, infected with ſcab or mange, in any common, or common fields; on pain of 10s: which offence ſhall be inquirable in the leet, as other common annoyances be, and the forfeitures ſhall be to the lord of the leet. 32 *H.* 8. *c.* 13. *ſ.* 9.

Warrant

Warrant to apprehend a horſe-ſtealer.

Weſtmorland. { To the conſtable of ——

FORASMUCH *as* A. I. *of* —— *in the county of* —— *yeoman, hath this day made information and complaint upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that yeſterday in the night a black mare, the property of him the ſaid* A. I. *was feloniouſly ſtolen, taken, and carried away from and out of the grounds of him the ſaid* A. I. *at* —— *aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that* A. O. *late of* —— *labourer, did feloniouſly ſteal, take, and carry away the ſaid mare: Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and bring him before me to anſwer to the ſaid information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and ſeal the* —— *day of* —— *in the year of our Lord* ——

Or if the offence amounts to burglary, then the warrant may be thus:

Weſtmorland. { To the conſtable of ——

FORASMUCH *as* A. I. *of* —— *in the county of* —— *yeoman, hath this day made information and complaint upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that yeſterday in the night the ſtable of him the ſaid* A. I. *adjoining to the dwelling houſe of him the ſaid* A. I. *at* —— *aforeſaid, was feloniouſly and burglariouſly broken open, and one black mare, the property of him the ſaid* A. I. *feloniouſly and burglariouſly ſtolen, taken, and carried away from thence; and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that* A. O. *late of* —— *in the county aforeſaid, labourer, the ſaid felony and burglary did commit: Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and bring him before me to anſwer to the ſaid information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and ſeal the* —— *day of* —— *in the year of our Lord* ——

Horſe races.

BY the 13 *G.* 2. *c.* 19 Whereas the great number of horſe races for ſmall plates or prizes have contributed very much to the encouragement of idleneſs, and impoveriſhment of many of the meaner ſort of people, and the breed of ſtrong and uſeful horſes hath been much prejudiced thereby; it is enacted, that no perſon ſhall enter, ſtart, or run any horſe (mare or gelding) for any prize, unleſs the ſame ſhall be *bona fide* his own property: on pain of forfeiting the ſame, or the value thereof.

Nor ſhall any one perſon enter and ſtart more than one horſe for one and the ſame prize; on pain that every ſuch horſe (other than that which was firſt entred) ſhall be forfeited, or the value thereof.

And no plate, prize, ſum of money, or other thing, ſhall be run for, or advertiſed or proclaimed to be run for, unleſs ſuch plate, prize, or ſum of money, be of the real and intrinſic value of 50l. or upwards: And if any perſon ſhall enter, ſtart, or run, any horſe for any ſuch plate, prize, or ſum of money, under the value of 50l; or ſhall make, print, advertiſe, or publiſh any advertiſement of any ſuch prize under the value of 50l; every ſuch perſon ſo entring, ſtarting, or running ſuch horſe, ſhall forfeit 200l, and every maker, printer, or publiſher of ſuch advertiſement, ſhall forfeit 100l.

And no perſon ſhall ſtart or run any match for any ſum of money or other thing, unleſs it be at *Newmarket* or *Black Hambleton*, or unleſs ſuch ſum or other thing be of the real and intrinſic value of 50l or upwards; on pain of 200l.

The ſaid penalties to be recovered in the courts at Weſtminſter or at the aſſizes, and be diſpoſed of, half to him that ſhall ſue, and half to the poor of the pariſh where the offence ſhall be committed.

And all ſums of money paid for entrance ſhall go to the ſecond beſt horſe.

In the caſe of *Bidmead* and *Gale*, *E.* 9 *G.* 3. An action of covenant was brought upon articles to run a horſe match. The agreement was, that each ſhould ſtart his mare; and that if either ſhould refuſe or neglect, he ſhould forfeit and pay 25l to the other. So that it was a match for 25l each ſide, play or pay: But the plaintiff was to pay the defendant 5l before hand, as a conſideration to induce him to make the match. The defendant afterwards refuſed to run the match. Whereupon

upon the plaintiff brought this action againſt him, for the 25l; and aſſigned the breach of covenant, in the defendant's not ſtarting his mare. The cauſe was tried before Mr. Baron *Perrot*, who conſidered it as a match for 50l, and directed a verdict for the plaintiff, with liberty to move in arreſt of judgment.——A motion in arreſt of judgement was accordingly made. And after ſome ſmall altercation whether this were within the ſtatutes of gaming, the matter was reduced to this ſingle queſtion, whether this was a match for 50l, or for leſs than 50l. If it was for leſs than 50l, it is prohibited by the ſtatute of 13 *G.* 2. *c.* 19. which enacts, that no match, unleſs at *Newmarket* or *Black Hambleton*, ſhall be run for any ſum of money or other thing, of leſs value than 50l.——For the defendant it was urged, that this was only . match for 25l, as neither party could loſe more than that ſum; or, at the utmoſt, a match for 45l, as the total of both ſums riſqued did amount to no more; for there was no riſque remaining upon the 5l which the defendant had received from the plaintiff, and had ſafe in his purſe, without poſſibility of loſing it upon this match.——The plaintiff's counſel argued, that the ſum run for was moſt manifeſtly 50l; and that the advancing 5l certain made no ſort of difference.—— The court, as it turned upon the conſtruction of a general act of parliament, took a few days to conſider. After which, lord *Mansfield* declared that they were all of opinion, that this was a match for 50l, though the ſtakes were unequal, of which the plaintiff contributed 30l, and the defendant 20l; that is, they ſtaked after the proportion of three to two. *Burr. Manſf.* 2432.

Betting, loſing, winning, cheating, and the like, at horſe races, are within the ſtatutes of Gaming; for which ſee the title Gaming.

Houſe.

I. Houſe, how far protected by law.

II. Duty on houſes in general, and on windows or lights therein.

III. Duty on houſes worth 5l a year and upwards.

I. Houſe,

I. House, how far protected by law.

A Man's home or habitation is so far protected by the law, that if any person attempts to break open a house in the night time, and shall be killed in such attempt, the slayer shall be acquitted and discharged. And so tender is the law in respect of the immunity of a man's house, that it will never suffer it to be violated with impunity. Hence in part arises the animadversion of the law upon eaves-droppers, nusances, and incendiaries: and to this principle it must be assigned, that a man may assemble people together lawfully (at least if they do not exceed eleven) without danger of raising a riot, rout, or unlawful assembly, in order to protect and defend his house, which he is not permitted to do in any other case. 4 *Black.* 223.

In the case of burglary, which is breaking and entring a dwelling house in the night time with intent to commit felony, it is a capital offence, although no felony be actually committed. And where the offence falls short of burglary, it is by several particular statutes made felony without benefit of clergy, to rob any dwelling house in the day time, any person being therein; or stealing in the day time to the value of 5 s in any dwelling house or outhouse thereunto belonging, although no person be therein; or stealing to the value of 40 s in any such dwelling house or outhouse, although the same be not broken open; or breaking a house in the day time, any person being therein and put in fear, although nothing be stolen; or privately stealing any goods to the value of 5 s in any shop, warehouse, or stable, although it be not broken open, nor any person be therein. And a reward of 40 l is given to any person who shall apprehend and prosecute to conviction any person guilty of the felonious breaking and entring of a dwelling house either by day or night. 3 *W.* c. 9. 39 *El.* c. 15. 12 *An. st.* 1. c. 7. 5 *Ed.* 6. c. 12. 10 & 11 *W.* c. 23. 5 *An.* c. 31.

Concerning the breaking open the doors of an house, in order to apprehend offenders, it is to be observed, that the law never allows of such extremities, but in cases of necessity; and therefore that no one can justify the breaking open another's door to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *Haw.* 86.

But where a person, authorised to arrest another who is sheltered in an house, is denied quietly to enter into it,

in order to take him; it ſeems generally to be agreed, that he may juſtify breaking open the doors in any caſe where the king is party, as upon a warrant from a juſtice of the peace to find ſureties for the peace or good behaviour, or for the levying of a forfeiture upon a penal ſtatute, which gives the whole or any part of ſuch forfeiture to the king. *Id.*

In a civil ſuit; an officer cannot juſtify the breaking open an outward door or window in order to execute proceſs. If he doth, he is a treſpaſſer. But if he finds the outward door open, and enters that way, or if the door be opened to him from within, and he enters, he may break open inward doors if he find that neceſſary, in order to execute his proceſs. *Foſt.* 319.

For a man's houſe is his caſtle, for ſafety and repoſe to himſelf and family; but if a ſtranger, who is not of the family, upon a purſuit taketh refuge in the houſe of another, this rule doth not extend to *him*, it is not *his* caſtle, he cannot claim the benefit of ſanctuary therein. *Id.* 320.

II. Duty on houſes in general, and on windows or lights therein.

i. *Firſt meeting of the commiſſioners, for the iſſuing precepts to return aſſeſſors.*

ii. *Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.*

iii. *Third meeting; ſigning the aſſeſſment, with warrant to collect.*

iv. *Fourth meeting; the appeal.*

v. *Collecting.*

vi. *Collector paying to the receiver.*

vii. *Receiver paying into the exchequer.*

viii. *Duplicates to be tranſmitted into the exchequer.*

ix. *General penalty on officers not doing their duty.*

x. *Indemnity of officers in doing their duty.*

i. *Firſt meeting of the commiſſioners, for the iſſuing precepts to return aſſeſſors.*

1. Commiſſioners of the land tax ſhall be commiſſioners for the duties on houſes and windows. 20 *G.* 2. *c.* 3. *ſ.* 6. Commiſſioners of theſe duties.

But

But no commiſſioner of the land tax ſhall act as commiſſioner of theſe duties, unleſs duly qualified, (that is, unleſs he be taxed at 100 l a year in the county or diviſion, except certain counties in *Wales*, as by the land tax acts); on pain of 20 l, to be levied as other penalties by this act. 21 *G.* 2. *c.* 10. *ſ.* 3.

But they ſhall not be obliged to take the oaths, and ſubſcribe the declaration, and receive the ſacrament, as directed by the 25 *C.* 2. *c.* 2. as other perſons qualifying for offices; but only to take the oaths of allegiance, ſupremacy, and abjuration, as by the land tax acts. 20 *G.* 2. *c.* 3. *ſ.* 27.

Time and place of meeting.

2. Which ſaid commiſſioners ſhall meet yearly, at the moſt uſual place of meeting, at ſuch time as ſhall be appointed for the firſt general meeting of the commiſſioners of the land tax, or on ſuch other day as they ſhall think proper, before *April* 30 yearly. 20 *G.* 2. *c.* 3. *ſ.* 6.

Subdividing.

3. And at ſuch firſt meeting, they may agree to ſubdivide themſelves, and the other commiſſioners not then preſent, in ſuch manner as to them ſhall ſeem meet. *Id. ſ.* 6.

Precept to return aſſeſſors.

4. Alſo at ſuch firſt meeting, they or the major part of them then preſent, ſhall direct their ſeveral or joint precepts (A) to ſuch inhabitants, and ſuch number of them as they ſhall think moſt convenient, to be preſentors and aſſeſſors, requiring them to appear before the ſaid commiſſioners, at ſuch time and place as they ſhall appoint, not exceeding ten days. 20 *G.* 2. *c.* 3. *ſ.* 6.

Aſſeſſors in towns corporate.

5. But no perſon in a city, borough, or town corporate, ſhall be compelled to be an aſſeſſor or collector out of the limits thereof. 20 *G.* 2. *c.* 3. *ſ.* 18.

Collectors to return their laſt collection bills.

6. And the laſt collectors ſhall cauſe a copy of the aſſeſſments given to them, and of the collection made by them, to be fairly written and ſigned by them, but with ſuch alterations therein as ſhall be neceſſary, by reaſon of any new houſes erected, or the number of windows in any houſe increaſed, or by reaſon of the change of inhabitants or occupiers of any houſe, or otherwiſe, or a true duplicate thereof, ſigned as aforeſaid, to be delivered to three or more commiſſioners yearly, within ten days after the firſt meeting. 20 *G.* 2. *c.* 3. *ſ.* 8.

So that it may be moſt proper to direct the precept for the laſt collectors to be aſſeſſors.

Aſſeſſors to take the oaths.

7. And every aſſeſſor, before he acts, ſhall take the oaths required by the 1 *W.* *c.* 18. before three commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 6.

When

Which oaths are the oaths of allegiance and ſupremacy.

But quakers, inſtead of ſuch oaths, ſhall be allowed to make and ſubſcribe the declaration of fidelity, preſcribed by the ſaid act of the 1 *W.* *c.* 18. 20 *G.* 2. *c.* 42. *ſ.* 4.

8. Aſſeſſors refuſing to take the oaths, or their offices, ſhall forfeit 5 l. 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3. Aſſeſſors refuſing.

ii. *Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.*

1. The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates and duties, and openly declare the effect of their charge unto them, and how they ought to make their aſſeſſments. 20 *G.* 2. *c.* 3. *ſ.* 6. Charges to the aſſeſſors.

2. That is to ſay, for every dwelling houſe inhabited, ſhall be paid yearly 3 s. 6 *G.* 3. *c.* 38. *ſ.* 2. Duty on houſes.

3. And for every window or light in every dwelling houſe inhabited, an additional yearly ſum as followeth: Duty on windows.

7 windows, and no more	—	2 d. each.
8 —	—	6 d. each.
9 —	—	8 d. each.
10 —	—	10 d. each.
11 —	—	1 s. 0 d. each.
12 —	—	1 s. 2 d each.
13 —	—	1 s. 4 d. each.
14, 15, 16, 17, 18, 19	—	1 s. 6 d. each.
20 —	—	1 s. 7 d. each.
21 —	—	1 s. 8 d. each.
22 —	—	1 s. 9 d. each.
23 —	—	1 s. 10 d. each.
24 —	—	1 s. 11 d. each.
25 and upwards	—	2 s. 0 d. each.

Every dwelling houſe] Caſe of Mrs. *Torkington*, *Deptford*, *Aug.* 23, 1750. Mrs. *Torkington* held *two* houſes, which adjoined cloſe to each other, and had ſeparate and diſtinct ſtair-caſes, and alſo different avenues from the ſtreet to the houſe, and ſhe was charged by the aſſeſſors for them as two ſeparate houſes. But the ſurveyor finding that there was a communication between the two houſes by a door-way on the ground floor, which was conſtantly made

made uſe of, ſurcharged her as for one entire tenement. Upon which, ſhe appealed to the commiſſioners; who determined that ſhe was not liable to be charged for one intire houſe. But on a ſpecial ſtate of the caſe for the opinion of the judges, *Lee* chief juſtice and nine other of the judges declared their opinion that the determination of the commiſſioners was wrong. †

Dwelling houſe] Caſe of the *Foundling hoſpital*, Nov. 10. 1748. *Taylor White*, eſquire, treaſurer to the truſtees and guardians of the ſaid hoſpital, was charged for the window duty on the ſaid hoſpital. On appeal, the commiſſioners were of opinion, and accordingly determined, that the ſaid truſtees ought to pay the duty. And on reference to the judges, they were all of opinion that the determination of the commiſſioners was right.

St. *Thomas's hoſpital*, June 7, 1749. The ſeveral officers of the ſaid hoſpital were charged for their reſpective apartments within the ſame; which they enjoyed as dwelling houſes, and they and their families reſided therein as ſuch: All the ſaid apartments were within the hoſpital, and the only acceſs to them (the treaſurer's only excepted) was by going into the ſaid hoſpital. The commiſſioners determined, that they ſhould be diſcharged from payment of the ſaid ſeveral duties. But the judges were all of opinion, that the determination of the commiſſioners was wrong.

Borough of *Stamford*, 16 *July*, 1762. The *gaoler* was charged in reſpect of his dwelling houſe, which was part of the gaol. On appeal, the commiſſioners diſcharged him. But the judges were of opinion, that the determination of the commiſſioners was wrong, and therefore that the gaoler ought to be charged.

Pariſh of St. *John's Clerkenwell*, Aug. 22, 1753. The appellant was charged for 63 windows in the *workhouſe*, which was built at the public expence of the pariſh, for the maintenance and lodging of the poor of the ſaid pariſh; the beds, bedding, and other furniture for the ſaid workhouſe were all provided by the pariſh; and the appellant was a perſon placed there by the officers of the pariſh, with a ſalary, to look after the poor

† This and the other caſes following under this title are taken from a printed account of caſes ſent to the ſeveral ſurveyors, as determined by the judges on references to them for their opinion.

people

people in the ſaid workhouſe, and had only two rooms there for himſelf and wife to inhabit and lodge in; and 61 of the windows in the ſaid workhouſe, for which the appellant was charged, belonged wholly to thoſe parts of the workhouſe which were appropriated for the poor people placed therein. The commiſſioners were of opinion, that the appellant was not chargeable with the duty in reſpect of the aſſeſſment made on him for the ſaid workhouſe, and therefore allowed of his appeal againſt the ſaid charge upon the ſaid houſe and 63 windows therein. But *Ryder* chief juſtice, and ten other of the judges, declared their opinion, that the determination of the commiſſioners was wrong.

Inhabitants of *Ware* in *Hertfordſhire*, 3 July, 1775. The pariſh workhouſe was charged; and the caſe of St. *John's Clerkenwell* was inſiſted on as a caſe in point: But the commiſſioners were unanimouſly of opinion, that hoſpitals, poor houſes, workhouſes, and infirmaries, are not liable to be charged with the ſaid duty. And lord *Mansfield* and the other eleven judges held, that the determination of the commiſſioners was right. ‡

Weſt Wycomb workhouſe, 3 July, 1775. The governor of the workhouſe appealed againſt a ſurcharge made upon him and the pariſhioners for the windows in the workhouſe, except only thoſe in the apartment wholly made uſe of by him the ſaid governor. The commiſſioners, on the authority of the aforeſaid caſe of St. *John's Clerkenwell*, confirmed the ſurcharge. But the judges were of opinion, that only the windows in the room occupied by the governor ought to be charged.

Beaminſter workhouſe, 3 July, 1775. *Robert Symes* the maſter of the workhouſe was charged for the windows therein. It appeared that he and his wife were ſervants hired from year to year, at yearly wages, like other common ſervants, for their reſpective ſervices in this houſe, living in common with the ſaid poor, in the ſame rooms, and on the ſame proviſions, and uſing the goods and furniture that were provided for the ſaid poor; and that his and his wife's linen was waſhed in the houſe at the pariſh expence, like as the poor people's cloaths were waſhed; that the ſaid *Robert Symes* had no goods whereon this duty could be levied; neither had he any diſtinct apartment in the houſe ſeparate from the poor. Whereupon the commiſſioners determined that the ſaid *Robert Symes* was

‡ Note, all the caſes here recited, which bear date 3 July, 1775, are ſubſcribed by the whole twelve judges.

not

not chargeable. And the judges were of opinion, that the determination of the commiſſioners was right.

Worceſter infirmary, 3 July, 1775. The infirmary was built and maintained ſolely by voluntary and charitable ſubſcription, for the reception of ſick and lame poor only; in which there is no place of habitation for phyſician, ſurgeon, ſecretary, or any other perſon or officer attending the houſe, or any inhabitant that pays any parochial aſſeſſment. The ſurveyor delivered a ſurcharge on the matron of the infirmary for the duty. To this ſurcharge the matron appealed to the commiſſioners, ſuggeſting, that ſhe had no real property in the hoſpital, and was only a nurſe under the ſubſcribers to the charity. Therefore the commiſſioners diſcharged her. And the judges were of opinion that the commiſſioners had done right.

Magdalen hoſpital, 3 July, 1775. The matron was charged for 198 windows of the ſaid hoſpital. Upon appeal, the commiſſioners adjudge, that the offices and places occupied by the officers and ſervants belonging to the hoſpital only are rateable; that the ſame contain 45 windows only; and that the other windows belonging to that part of the hoſpital which is only applied to the uſe of the objects of the charity are not rateable. And the judges were of opinion that the determination of the commiſſioners was right.

Dwelling houſe inhabited] Caſe of *William Tullie* eſquire in the north riding of *Yorkſhire*, 27 Jan. 1764. It appeared that the houſe was not inhabited, but was furniſhed; and a woman who lived in the town in a houſe of her own, went frequently to open the windows to air the houſe, and to take care of it, for which ſhe had a yearly ſtipend: but as ſhe did not lodge in the houſe, nor make fires, the commiſſioners determined that the houſe was not liable to be charged. But the judges were of opinion, that the determination of the commiſſioners was wrong.

Caſe of *Benjamin Broomhead* eſquire in the county of *Lincoln*, 16 July, 1767. The houſe was certified by the aſſeſſors as empty. It appeared that the only uſe the owner made of it was now and then to drink a glaſs of wine in it when he comes there; that he had four times laſt ſummer dined there with his family; but that he never lodges in the ſaid houſe; that a perſon who rents part of one of the offices belonging to the ſaid houſe has the

care thereof, and occaſionally ſets open the windows to air the rooms. It was determined by the commiſſioners, that the houſe was not liable; but the judges were of opinion that the determination of the commiſſioners was wrong.

Caſe of Sir *William Trelawney*, 3 July, 1775. He had a houſe in *Pelyns* in the county of *Cornwall*. He and his family were then at *Jamaica*, and the houſe was not inhabited; but once a year Sir *William*'s ſteward, who lived at the diſtance of twenty miles from the ſaid houſe, came there to receive the rents of his eſtates, and laid there for two or three nights. The keeping and looking after the houſe was committed to the care of a woman, who occaſionally aired the ſame, but did not lodge there, and lived at a quarter of a mile's diſtance therefrom, in her own houſe. The commiſſioners determined that the ſaid houſe ought not to be charged: But the judges were of opinion that their determination was wrong.

Caſe of *James Durno* of *Kenſington*, 3 July, 1775. On appeal againſt the ſurveyor's ſurcharge for one half year, during which time the appellant inſiſted that the houſe was not inhabited, it appeared, that the ſaid houſe was during all the ſaid ſpace of time furniſhed; and that a bill was affixed on the door, purporting that the houſe was to be let ready furniſhed; that Mr. *Durno*'s ſervant, or agents, frequently went to the houſe, and opened the windows thereof, and ſhewed the ſame to people who applied to take the houſe; but that no ſervant or agent of Mr. *Durno*'s, or any other perſon, during all the time aforeſaid, either lodged in, or occupied the ſaid houſe. Whereupon the commiſſioners, apprehending that the houſe ought to be conſidered as unoccupied, diſcharged the ſame from the duties for the time aforeſaid. And the judges were of opinion that the determination of the commiſſioners was right.

Unto what windows the ſame ſhall extend.

4. And every kitchen, ſcullery, buttery, pantry, larder, waſh-houſe, laundry, bakehouſe, brewhouſe, and lodging room, belonging to or occupied with any dwelling, whether joined to it or not, ſhall be deemed part thereof, and the windows therein charged accordingly. 21 *G.* 2. *c.* 10. *ſ.* 1.

And ſky lights, and windows or lights in ſtair caſes, garrets, cellars, paſſages, and in all other parts of dwelling houſes, to what uſe ſoever applied, ſhall be charged. *ſ.* 2.

Kitchen, ſcullery, buttery, &c.] Caſe of *Colcheſter*, June 19, 1759. It was determined by the commiſſioners, that

ſhops, *warehouſes*, and *counting houſes*, not being enumerated in the act, ought therefore not to be charged: But it was held by the judges that they are equally liable as the reſt.

Caſe of *Diſs* in *Norfolk*, 3 July, 1775. Upon the like ground, it was determined by the commiſſioners, that *dairies* and *cheeſe chambers* are not liable: But the judges were of opinion, that the determination of the commiſſioners was wrong.

Caſe of Mr. *Godbold* an attorney at *Great Bircham* in *Norfolk*, July 3, 1775. He was aſſeſſed for two windows in a certain room not adjoining to his dwelling houſe, in which he did uſually write and tranſact his buſineſs as an attorney; and as the ſaid room did not come within any of the particulars ſpecified in the act, and was at a diſtance from, and had no covered way from his dwelling-houſe, he alledged that he ought not to be charged for the ſaid windows. But the commiſſioners determined that he ought to be charged for the ſaid two windows; and the judges were of opinion that the commiſſioners had done right.

Several windows in one frame.

5. And where ſeveral windows are fixed in one *frame*, if the partition or diviſion between them is of the breadth of 12 inches, the window on each ſide of the partition ſhall be deemed a diſtinct window. 20 *G.* 2. *c.* 3. *ſ.* 38.

Borough of *Doncaſter*, Nov. 18, 1767. There was a window above and on each ſide of the door; and the windows on the ſides were within the ſpace of 12 inches from the window above the door: but the windows were in ſeparate frames. And this was holden not to be within the act, ſo as to be chargeable as one window only, but as three diſtinct windows.

So in the caſe of the city of *Oxford*, June 19, 1759; where two windows were made into one, by joining them together in one frame, and the partition was of leſs breadth than 12 inches: this was held by the judges to be fraudulent, and the windows liable to be charged as two diſtinct windows.

And in the caſe of *Sidbury*, June 27, 1757; where the owner, in order to reduce the number of his windows, had fixed between two of the windows a piece of glaſs of four inches in breadth and eleven inches in length: this was held by the judges to be a manifeſt evaſion of the act, and the windows therefore liable to be charged as two diſtinct windows.

Caſe of *William Greenleaf* of *Ipſwich*, 3 July, 1775. He built an houſe of brick, in the front of which were four

four bow windows. In conſtructing which windows, the timber work, comprehending the front and return at each end of the bow was made in one intire frame, and ſo worked into the building. But by reaſon of a caſing of brick work at the outſide of each angle of the bow, it had externally a greater diſtance than 12 inches between light and light; though within, the timber frame was no more than eleven inches between light and light. The aſſeſſors charged each of theſe bow windows as but one light, from the circumſtance of there being but eleven inches diſtance in the wood work between one light and another. But the ſurveyor, judging by the external appearance of each window, as it meaſured more than 12 inches without, ſurcharged the ſame as three diſtinct lights. The commiſſioners confirmed the ſurcharge. And the judges were of opinion, that the determination of the commiſſioners was right.

Window enlightening two rooms.

6. And all windows in frames which ſhall give light into more rooms than one, ſhall be charged as ſo many ſeparate windows, as there are rooms enlightened thereby. 20 *G.* 2. *c.* 3. *ſ.* 38.

Windows ſtopped up.

7. And no windows or lights ſhall be deemed to be ſtopped up, unleſs it be done effectually with ſtone or brick, or plaiſter upon lath, or upon any other material commonly uſed to plaiſter upon, or with the ſame kind of materials whereof the outſide of the houſe doth chiefly conſiſt. 21 *G.* 2. *c.* 10. *ſ.* 11.

But this not to extend to windows ſtopped up with any materials, before the year 1746. *ſ.* 12.

And if any occupier ſhall open any windows, after the aſſeſſments are ſettled, and warrants for collecting ſigned, without notice in writing to the ſurveyor, he ſhall forfeit 20*s.* 20 *G.* 2. *c.* 3. *ſ.* 39. by diſtreſs and ſale, *ſ.* 28. half of which fine ſhall go to the informer. 21 *G.* 2. *c.* 10. *ſ.* 15.

Two families in one houſe.

8. Where a houſe ſhall be inhabited by two or more perſons or families, it ſhall pay as if it was inhabited by one perſon or family only. 20 *G.* 2. *c.* 3. *ſ.* 31.

Houſe let in different apartments.

9. Where any dwelling houſe is let in different apartments to ſeveral perſons, and the landlord of ſuch houſe pays other taxes and pariſh rates for the ſame; ſuch landlord ſhall be deemed the occupier of ſuch dwelling houſe, and be charged with the duties for the ſame, as an entire houſe. 20 *G.* 2. *c.* 3. *ſ.* 35.

Rates to be charged on the inhabitants.

10. And the rates ſhall be charged only upon the inhabitants or occupiers, and not on the landlord who let or demiſed the ſame. 20 *G.* 2. *c.* 3. *ſ.* 5.

Infants how chargeable.

11. Parents and guardians of infants, on default of payment by such infants, shall be liable; and may be proceeded against as other persons making default. *id. s.* 15.

Colleges.

12. Each distinct chamber in a college or hall in the universities, shall pay as if it were an entire house paying to church and poor. *id. s.* 32.

Inns of court.

13. Every edifice in the inns of court or chancery, being severally in the occupation of any person, shall pay for every window or light; but shall not pay the 3 s duty on houses. 20 *G.* 2. *c.* 3. *s.* 33. 21 *G.* 2. *c.* 10. *s.* 18, 19.

Cottages.

14. Such dwelling houses only, where the occupier, by reason of poverty only, is exempted from the usual taxes to church and poor shall be exempted from the duties; and that only in such cases where the dwelling houses so occupied are cottages, not containing above nine windows in the whole. 20 *G.* 2. *c.* 3. *s.* 29.

Houses let to servants.

15. But every house whereof the keeping only is committed or left to a person or servant who pays not to church and poor, shall pay as if inhabited by the occupier or tenant. *id. s.* 33.

Obstructing the assessors.

16. And if any person shall wilfully obstruct or molest any assessor in the execution of his duty, he shall forfeit 5 l, to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *s.* 14.

Assessors to assess themselves.

17. And the assessors shall assess themselves and the commissioners, as other persons are assessed. 21 *G.* 2. *c.* 10. *s.* 16.

Day for bringing in the assessments.

18. And the commissioners shall then and there prefix a day for the persons to appear before them, and bring in their assessments in writing under their hands; setting forth therein the names and surnames of the several occupiers or inhabitants of each respective dwelling house chargeable, the number of windows or lights, and the several sums they ought to pay. 20 *G.* 2. *c.* 3. *s.* 6.

Which day shall be on or before *June* 4 yearly. *s.* 7. (B).

iii. *Third meeting; signing the assessment, with warrant to collect.*

Assessment delivered in.

1. The assessors appearing at the day appointed, shall deliver in their assessments, to be verified upon their oaths, and not otherwise. 20 *G.* 2. *c.* 3. *s.* 6.

Returning the names of collectors.

2. And shall then return the names of two or more able and sufficient persons to be collectors, for whom the parish or place shall be answerable. 20 *G.* 2. *c.* 3. *s.* 6.

3. At which time alſo three or more of the commiſſioners ſhall ſet their hands to the aſſeſſments, teſtifying their allowance thereof. 20 *G.* 2. *c.* 3. *ſ.* 9. Signing the aſſeſſment.

Note; It is not neceſſary by the words of the act that the ſame ſhall be ſealed.

4. And they ſhall alſo appoint two of the perſons named in the aſſeſſment, or any two others whom they ſhall think able and reſponſible, to be collectors. *id.* (C). Appointing collectors.

5. Alſo on delivery and return of the aſſeſſments, three or more commiſſioners ſhall, at leaſt ten days before the rates ſhall become due, iſſue their warrants or eſtreats under their hands and ſeals, to the collectors, for the ſpeedy collecting and levying the ſame, as they ſhall become due and payable. *id. ſ.* 7. Warrant to collect.

And they ſhall forthwith deliver the aſſeſſment ſo allowed of, to the collectors. *ſ.* 9.

6. Collectors refuſing to take their offices, ſhall forfeit 5 l, 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3. Collector refuſing to act.

7. Then three or more commiſſioners ſhall alſo give the collectors notice when and where the appeals of any perſons who ſhall think themſelves over-rated, may be heard and determined. *id. ſ.* 12. Appointing the time for appeal.

And all appeals which ſhall be made between *Mar.* 25, and *Aug.* 20, yearly, ſhall be heard and determined by the commiſſioners upon ſuch days as ſhall be by them appointed between *Aug.* 20, and *Sept.* 15. And all ſuch other appeals as ſhall be made between *Sep.* 29, and *Jan.* 20, yearly, ſhall be heard and determined upon ſuch other days as ſhall be appointed between *Jan.* 20, and *Feb.* 10. 21 *G.* 2. *c.* 10. *ſ.* 7.

8. And where the commiſſioners ſhall have omitted to execute the powers to them given within the time, and according to the manner above preſcribed, two or more of them may meet, and execute the ſame at any other times, as there ſhall be occaſion. 20 *G.* 2. *c.* 42. *ſ.* 1. Remedy where the commiſſioners have omitted their duty.

9. At this third meeting likewiſe comes in the buſineſs of the ſurveyors, who ſhall be appointed by the king, or three commiſſioners of the treaſury: who ſhall appoint them ſuch ſalaries as they ſhall think reaſonable. 20 *G.* 2. *c.* 3. *ſ.* 30, 42, 43. Surveyors to examine and ſurvey.

And they ſhall have power to examine the aſſeſſments, before they are ſigned and allowed by the commiſſioners; and at ſeaſonable times, with a conſtable, to view and examine whether there be any more windows than are aſſeſſed, and to paſs for that purpoſe through any houſe, to go

into any court, yard, or backside thereunto belonging, and externally to view the windows which cannot be conveniently seen or numbered without going thro' such house: and this they may do twice a year. *id. s.* 30.

And the constables, and other his majesty's officers, shall be assisting; and shall also obey and execute the warrants of the commissioners to them directed. *id. s.* 22.

And if any person shall wilfuly obstruct or molest any surveyor in the execution of his duty, he shall forfeit 5*l*; to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *s.* 14.

iv. *Fourth meeting*; *the appeal.*

Notice of the appeal day to be given in the church.

1. Every collector shall, within ten days after notice from the commissioners of the time and place of appeal, cause publick notice to be given in every parish church or chapel within his district, immediately after divine service, on the Lord's day (if any such divine service shall be performed there within that time) of the time and place so appointed by the commissioners for hearing and determining appeals: And shall also on the same day, cause the like notices to be fixed in writing on the door of such church or chapel. 20 *G.* 2. *c.* 3. *s.* 12.

Surveyor to give in his surcharge.

2. And after the rates are signed and allowed by the commissioners, if the surveyor finds on his survey, that any houses or lights have been omitted, or are under-rated, he shall certify the same in writing under his hand, by way of surcharge, on or before *Aug.* 10, and *Jan.* 10, yearly, to any three or more commissioners, in order to have such omission or under-rate certified in the assessment. 20 *G.* 2. *c.* 3. *s.* 37 21 *G.* 2. *c.* 10. *s.* 6.

And he shall also leave a written notice at the dwelling house of every occupier so surcharged, that he intends to charge them for such number of windows or lights as are charged in such certificate. 21 *G.* 2. *c.* 10. *s.* 6.

Notice of appeal.

3. And every person intending to appeal shall give at least ten days notice thereof in writing to the surveyor, or to one or more of the assessors. 21 *G.* 2. *c.* 10. *s.* 8.

Assessment not to be altered but on a general appeal day.

4. And no assessment shall be altered or diminished, except only on hearing the appeal, upon a general appeal day. 21 *G.* 2. *c.* 10. *s.* 5.

Surveyor may be present.

5. And the surveyor, assessors, and appellant may be present during the time of hearing and determining the appeal, unless they misbehave. 21 *G.* 2. *c.* 10. *s.* 8.

Commissioner interested to withdraw.

6. And in case of any controversy arising between the commissioners concerning the assessments, the commissioners that shall be concerned therein shall have no voice, but

but ſhall withdraw during the debate, until it be determined by the reſt of the commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 21.

7. The ſurveyor appearing to make good his ſurcharge, ſhall make oath that a written notice was left at the dwelling houſes of the ſeveral occupiers ſo ſurcharged, that he intended ſo to ſurcharge them. 21 *G.* 2. *c.* 10. *ſ.* 6. Surveyor to make oath that he gave notice.

8. At the appeal, the commiſſioners ſhall examine the parties complaining, upon oath, concerning their number of windows or lights. 20 *G.* 2. *c.* 3. *ſ.* 12. The parties to be examined on oath.

And they ſhall not make any abatement of the charge or ſurcharge, unleſs it doth appear upon oath, that ſuch perſon is over-rated. 21 *G.* 2. *c.* 10. *ſ.* 8.

9. Appeals determined ſhall be final: Except that if the ſurveyor or appellant ſhall then declare himſelf diſſatisfied with the determination of the commiſſioners, they ſhall, at ſuch perſon's requeſt, ſtate ſpecially and ſign the caſe upon which the queſtion aroſe, together with their determination thereupon, and cauſe the ſame to be delivered to the party, to be by him tranſmited to one of the judges; who ſhall with all convenient ſpeed return an anſwer, with his opinion ſubſcribed; according to which the aſſeſſment ſhall be altered or confirmed; provided that the determination of the commiſſioners ſhall ſtand, with reſpect to the payments which ſhall be due precedent to the opinion upon the caſe certified by the judge. 21 *G.* 2. *c.* 10. *ſ.* 9, 10. How far the appeal determined ſhall be final.

V. *Collecting.*

1. The collectors ſhall make demand of the parties chargeable, or at the places of their laſt abode, within ten days after the duties ſhall become due and payable. 20 *G.* 2. *c.* 3. *ſ.* 7. Collector to make demand.

2. And on payment thereof, they ſhall give acquittances *gratis*; which ſhall be a full diſcharge to the perſon paying the ſame. *id.* And give receipts.

3. And if any perſon ſhall refuſe to pay to the collector on demand, he may diſtrain ſuch perſon by his goods; and ſhall keep the diſtreſs four days at the owner's coſt; and if not paid in the ſaid four days, then the diſtreſs ſhall be appraiſed by two inhabitants, and there ſold by the officer; the overplus (if any) over and above the charges of taking and keeping the diſtreſs, to be immediately reſtored to the owner. *id.* *ſ.* 11. May diſtrain.

And where any refuſal, neglect, or reſiſtance ſhall be made, it ſhall be lawful by warrant of three commiſſioners

to break open any house in the day time, calling in the constable to assist. *id.*

Commitment for want of distress.

4. And if sufficient distress cannot be found, three commissioners by their warrant may commit any person who shall refuse or neglect to pay for 20 days after demand, to the common gaol, until payment shall be made. 20 *G.* 2. *c.* 3. *s.* 11.

Levying arrears.

5. Arrears may be levied by the commissioners in the same manner as the rates and duties. 21 *G.* 2. *c.* 10. *s.* 17.

Occupier removing.

6. Where the occupier removes without paying the rates, the commissioners are to transmit a certificate thereof, to the commissioners where the person resides; who shall cause the same to be levied and paid to the collectors of the place from whence the person did remove. 20 *G.* 2. *c.* 3. *s.* 41.

vi. *Collector paying to the receiver.*

Collector to pay to the receiver.

1. The collectors shall pay in the money received, within twenty days after the receipt thereof, to the receiver general or his deputy, at such place as the commissioners shall appoint. 20 *G.* 2. *c.* 3. *s.* 7.

Provided that the collectors shall not be obliged to travel above ten miles from their habitations, to pay the money collected. *s.* 24.

Receiver to give acquittances.

2. Which receiver general shall give acquittances *gratis*; which shall be a full discharge to the collectors. 20 *G.* 2. *c.* 3. *s.* 21.

Deputy receiver.

3. And the said receiver general shall give notice of his appointment of a deputy (which appointment shall be under hand and seal) unto three or more commissioners, within 20 days after their first meeting, and within 20 days after the death or removal of any deputy. 20 *G.* 2. *c.* 3. *s.* 23.

Collector to have 3d a pound.

4. Every collector shall have 3d in the pound, for what money he shall pay to the receiver general. *id.* *s.* 11.

Collector failing.

5. And if the collector shall neglect or refuse to pay the money by him received, at the time appointed, three or more commissioners may imprison his person, and seize and secure his estate as well freehold as copyhold, and all other estate both real and personal to him belonging, or which shall come to his heirs, executors, or administrators: Which commissioners may appoint a time for a general meeting of the commissioners, giving publick notice thereof

thereof ten days before; and the commiſſioners at ſuch general meeting may ſell ſuch eſtates, or any part of them, for payment. 20 G. 2. c. 3 ſ. 16.

And if there be any arrear, by reaſon of the failure of a collector for whom the pariſh or place is anſwerable, three commiſſioners may cauſe it to be reaſſeſſed in ſuch pariſh or place. *id.* ſ. 34.

6. And the collectors ſhall deliver a ſchedule of arrears to the receiver general, to be by him returned into the exchequer, that proceſs againſt the defaulters may be iſſued from thence. 20 G. 2. c. 3. ſ. 21. Returning arrears into the exchequer.

The receiver general returning any perſons in arrear who have paid, ſhall forfeit double damages to the party, and double the ſum to the king. ſ. 25.

And no receiver ſhall return any perſon in arrear in his accounts, unleſs ſuch account be paſſed in the exchequer, within two years after the end of the year for which ſuch rate ſhall be payable, but the ſame ſhall be a debt on him and his ſecurities. ſ. 26.

vii. *Receiver paying into the exchequer.*

1. The receiver general ſhall pay the ſum received into the exchequer, by four quarterly payments (*viz. Jan.* 5, *April* 5, *July* 5, and *Oct.* 10,) or in 40 days after the reſpective quarterly pay days; on pain of 500 l, to him who ſhall ſue. 20 G. 2. c. 3. ſ. 10. 6 G. 3. c. 38. ſ. 6. Times of paying into the exchequer.

2. And he ſhall have an allowance of 2 d in the pound, for the money he ſhall pay into the exchequer. ſ. 11. Receiver's allowance.

viii. *Duplicates to be tranſmitted into the exchequer.*

The commiſſioners ſhall cauſe true duplicates of the aſſeſſments to be made out, within three months at fartheſt after *Mar.* 25 yearly; the appeals being firſt heard and determined. Such duplicates to be made for the ſame hundreds, wards, pariſhes, or places, for which diſtinct duplicates are and have been uſually made out for the land-tax; and the names and ſurnames of the aſſeſſors and collectors reſpectively ſhall be inſerted therein. 20 G. 2. c. 3. ſ. 10. Tranſmitting the duplicates.

One of which duplicates ſhall be delivered to the receiver general, and another tranſmitted into the office of the king's remembrancer in the exchequer; for which the proper officer ſhall give acquittances *gratis*. Id.

All

All which being done, the commiſſioners clerks, for the careful writing and tranſcribing the aſſeſſments, warrants, eſtreats, and duplicates in due time, ſhall by warrant under the hands of three commiſſioners, receive 1½d in the pound, to be paid by the receiver general. *ſ.* 11.

ix. *General penalty on officers not doing their duty.*

Penalty on the ſurveyor. 1. If any ſurveyor ſhall knowingly, thro' favour or malice, under-rate or over-rate, or omit to charge any perſon liable, or ſhall be guilty of any corrupt or illegal practice in the execution of his office; he ſhall forfeit 100 l and his office. 20 *G. c.* 3. *ſ.* 10.

On the aſſeſſor. 2. Aſſeſſor guilty of concealment or favour in aſſeſſing, ſhall forfeit not exceeding 5 l, nor under 40 s. *id. ſ.* 6.

On the collector. 3. Collector gathering by a rate not ſigned and allowed by the commiſſioners; or receiving rates from perſons not charged therewith; or collecting from any perſon more than he is charged, and not paying the whole ſum collected; or fraudulently altering any rate after being ſigned by the commiſſioners, ſhall forfeit 20 l. *id. ſ.* 36. by diſtreſs. *ſ.* 28.

In the caſe of *Q.* againſt *Buck* and *Hale*, *M.* 3 *An.* The defendants were indicted and found guilty of a miſdemeanor, for that being aſſeſſors and collectors of the publick taxes of ſuch a pariſh, they aſſeſſed ſome too high, and omitted others in their books, and yet levied the money on them, and put it into their own pockets. On their coming to receive judgment, it was moved, that no corporal puniſhment might be inflicted, becauſe the crime was not of an infamous nature. But they were adjudged to the pillory in the county where the crime was committed; and that the marſhal ſhould carry them down, and a writ ſhould go to the ſheriff to aſſiſt him in the execution. 6 *Mod.* 306.

On others. 4. Generally; if any aſſeſſor, collector, or other perſon appointed by the commiſſioners, ſhall wilfully neglect or refuſe to perform his duty, three commiſſioners may fine him not exceeding 20 l, nor under 5 l; to be levied by diſtreſs, and charged amongſt the rates to the receiver general. *id. ſ.* 21.

General method of levying the penalties. 5. And the penalties and forfeitures, for which no other way of levying is preſcribed, ſhall be levied by warrant of three commiſſioners by diſtreſs, rendring the overplus, after deducting reaſonable charges for diſtraining. *id. ſ.* 28.

x. *Indemnity*

x. *Indemnity of officers in doing their duty.*

Perſons ſued for any thing done in the execution here- Treble coſts.
of, may plead the general iſſue, and have treble coſts. 20 *G.* 2. *c.* 3. *ſ.* 66. 21 *G.* 2. *c.* 10. *ſ.* 20.

A. Precept to the high conſtables to return aſſeſſors.

Weſtmorland. { To *Henry Holme*, gentleman, high conſtable of the Weſt Ward within the ſaid county.

WE *the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet, and ſeals affixed, do hereby require you forthwith upon the receipt hereof, to iſſue out your warrants to all the petty conſtables within your ſaid ward, according to the form hereupon indorſed. Given under our hands and ſeals the —— day of —— in the —— year ——.*

The form of the ſaid Warrant to be indorſed.

Weſtmorland, } To the conſtable of ——
Weſt Ward. }

BY *virtue of a precept from the commiſſioners of the duties upon houſes and windows for the ſaid county to me directed, you are hereby required forthwith to give notice to the laſt collectors of the ſaid duties within your conſtablewick, that they and every of them do perſonally appear before the ſaid commiſſioners at —— on —— the —— day of —— at the hour of —— in the forenoon of the ſame day, in order to be appointed aſſeſſors of the ſaid duties, for this preſent year, and at the ſame time to receive their charge, how and in what manner to make their aſſeſſments, and otherwiſe how to proceed in the execution of their ſaid office. And be you then there to certify what you ſhall have done in the execution hereof. Given under my hand the —— day of —— in the year of our Lord ——.*

Henry Holme, *high conſtable.*

B. Appointment of assessors, with their charge.

Westmorland. WE *the commissioners of the duties upon houses and windows for the said county, whose names are hereunto set, and seals affixed, do hereby nominate and appoint* ——— *to be assessors of the said duties within the township of* ——— *in the county aforesaid. And we do hereby require you the said assessors, to make your assessment for the same, according to the proportions of the last assessment for the said duties within your said township; but with such alterations therein as shall be necessary by reason of any new houses erected, or the number of windows in any house increased, or the removal and change of the inhabitants, or otherwise. And your said assessment you are to make out in writing, setting forth therein the names of the several occupiers or inhabitants, the number of windows or lights, and the sum which they ought to pay; and sign the same; and deliver the same to us upon oath at* ——— *in the county aforesaid, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the same day. At which time and place you are also hereby required to return unto us the names of two or more able and sufficient inhabitants within your said township, to be collectors of the said assessment; and in the mean-time to give notice unto them that they do also then and there appear, to receive their appointment, nomination, and charge. Given under our hands and seals the* ——— *day of* ——— *in the year of our Lord* ———.

C. Appointment and charge of the collectors, with warrant to collect.

Westmorland. WE *the commissioners of the duties upon houses and windows for the said county, whose names are hereunto set, and seals affixed, do hereby nominate and appoint* ——— *to be collectors of the said duties for the township of* ——— *in the said county, for this present year, and do hereby impower them to demand, collect, and receive the same. And you the said collectors are hereby required, within ten days after your receipt hereof, to cause public notice to be given in the church or chapel immediately after divine service on the Lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessment for the said duties will be heard and determined by the said commissioners at* ——— *on the* ——— *day of* ———. *And if any person shall neglect or refuse to pay the same unto you upon demand, you are hereby required forthwith, to give notice unto us thereof, that*

that ſuch further proceeding may be had therein, as to law doth appertain. And the ſame when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to ſay,———deducting out of the laſt payment thereof 3d for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and ſeals the———day of———in the year of our Lord———.

III. Duty on houſes worth 5l *a year and upwards.*

Duties charged.

1. By the 18 *G.* 3. *c.* 26. and 19 *G.* 3. *c.* 59. For *every dwelling houſe inhabited, together with the offices, courts, yards, and gardens* therewith occupied, worth the yearly rent of 5l and upwards, and under 20l, ſhall be paid the yearly ſum of 6d in the pound; if worth the yearly rent of 20l and upwards, and under 40l, the yearly ſum of 9d in the pound; if worth the yearly rent of 40l and upwards, the yearly ſum of 1s in the pound. Which ſaid yearly ſums ſhall be paid over and above the duties upon houſes charged by the act of 6 *G.* 3. *c.* 38. (that is, of 3s a houſe.) The ſame to be charged on the inhabitants or occupiers, or their executors or adminiſtrators, and not on the landlord.

For every dwelling houſe] But no duty ſhall be charged for any dwelling houſe, cottage, or tenement, whereof the occupier, by reaſon of his *poverty* only, is exempted from payment to the church and poor. 18 *G.* 3. *c.* 26. *ſ.* 6.

Alſo no *hoſpital*, or houſe for the reception and relief of poor perſons ſhall be liable. *ſ.* 35.

Several caſes have been determined on references reſpectively to the judges, concerning *taverns*, *alehouſes*, *coffee houſes*, and ſuch like, that they are liable to pay according to the improved rent at that time; and not at what they might be worth, conſidered as private houſes, without the advantages of their trade or buſineſs.

Each chamber or apartment in any *college* or *hall* in the univerſities, or the *inns of court or chancery*, ſhall pay as if it were an intire houſe. 18 *G.* 3. *c.* 26. *ſ.* 26, 27.

Where a houſe ſhall be *divided* into different ſtories, tenements, lands, or landings, and ſhall be inhabited by two or more perſons or families, the ſame ſhall pay as if inhabited by one perſon or family only. And the landlord or owner ſhall be deemed the occupier and charged accordingly. 18 *G.* 3. *c.* 26. *ſ.* 25. 19 *G.* 3 *c.* 59. *ſ.* 12.

Alſo every *hall* and office belonging to any perſon, or to any body politic or corporate, chargeable with any other taxes

taxes or parish rates, shall be subject to these duties, and the person or body politic or corporate to whom the same belongs shall be charged as the occupier. 19 *G.* 3. *c.* 59. *s.* 13.

But no *farm house* shall be rated: By which farm house is meant any house *bona fide* used or occupied for the purposes of husbandry only. Provided, that no such farm house which shall be occupied by the owner thereof, shall be intitled to such exemption, which shall be valued at more than 10 *l* a year, distinct from the land therewith occupied. *s.* 32, 3, 4.

But a *parsonage house*, wherewith the glebe land was occupied, hath been determined by the judges not to be exempted as a farm house.

Dwelling house inhabited] No house shall be deemed inhabited, in which a servant or other person only resides, to take care thereof; but if the inhabitant pays rent for the same, the house shall be deemed inhabited for the purposes of these duties. 18 *G.* 3. *c.* 26. *s.* 38. 19 *G.* 3. *c.* 59. *s.* 11.

Together with the offices, courts, yards, and gardens] Every coachhouse, stable, brewhouse, washhouse, laundry, woodhouse, bakehouse, dairy, and other offices, and all yards, courts, and curtilages, and gardens not exceeding one acre, belonging to and occupied with any dwelling house, shall be chargeable and valued with the dwelling house. 19 *G.* 3. *c.* 59. *s.* 5.

Also all shops and warehouses, which are attached to the dwelling house, or have any communion therewith, (except those of wharfingers,) shall be liable to the said duties. But warehouses, which are distinct and separate buildings, and not part of the dwelling house or shop, but employed solely for the purpose of lodging goods, wares, and merchandize, or for carrying on some manufacture (altho' the same may adjoin to, or have an internal communication with, the dwelling house) shall not be chargeable. *s.* 9, 10.

How to be levied 2. The same to be assessed annually for one whole year, to commence from the fifth day of *April* in each year; and to be levied by persons appointed by the same authority, and with such allowances, and under such penalties, forfeitures, and disabilities, and according to such rules, methods, and directions, as are appointed by the several acts of parliament for levying the duties upon houses and windows. 18 *G.* 3. *c.* 26. *s.* 7.

First meeting of the commissioners. 3. The commissioners shall meet yearly at such time as they shall think proper before the 30th of April. Provided,

vided, that if by any neglect or default there ſhall not have been a meeting of the commiſſioners, and a due execution of the ſeveral powers hereby created, within the time or according to the manner or circumſtances directed by this act; any two commiſſioners may meet and execute the ſaid power at any other time, ſo as that the duties may be levied and paid. *ſ.* 10, 11.

Commiſſioner's oath.

4. No perſon ſhall act as commiſſioner of theſe duties, until he hath taken an oath in the following manner:

"I *A. B.* do ſwear, That I will truly and faithfully "execute the office of a commiſſioner, and will determine "upon all appeals which ſhall be brought before me, ac- "cording to the beſt of my ſkill and judgment, purſuant "to the acts of parliament in that behalf. So help me "God."

And if he ſhall act before he hath taken ſuch oath, he ſhall forfeit 200 l; half to the king, and half to him that ſhall ſue. 19 *G.* 3. *c.* 59. *ſ.* 14, 15.

Precept to return aſſeſſors.

5. The commiſſioners ſhall cauſe notice to be inſerted in the precepts to be by them directed to the inhabitants of the ſeveral places whom they ſhall think fit to be preſenters or aſſeſſors under the former acts concerning the duties upon houſes and windows, that ſuch perſons are alſo appointed aſſeſſors of the duties upon houſes or tenements granted by this act. 18 *G.* 3. *c.* 26. *ſ.* 12.

Aſſeſſor's oath.

6. Every aſſeſſor, before he acts, ſhall before two commiſſioners (beſides the oaths required to be taken by aſſeſſors by the aforeſaid acts) take an oath, in the following form:

"I *A. B.* do ſwear, That in the aſſeſſment which I "ſhall make of the houſes and houſhold offices within "the diſtrict or pariſh for which I am appointed an aſ- "ſeſſor, I will rate each at the true annual value, ac- "cording to the beſt of my judgment and ſkill; and that "I will truly and faithfully execute the truſts repoſed in "me, by virtue of an act of the 18th year of his preſent "majeſty, for impoſing a new duty on all houſes of 5 l "a year and upwards: So help me God." 18 *G.* 3. *c.* 26. *ſ.* 15.

And if any perſon ſhall act before he hath taken ſuch oath, he ſhall forfeit 20 l; half to the king, and half to him who ſhall ſue. *ſ.* 16.

Manner of laying the aſſeſſment.

7. The aſſeſſors ſhall yearly, before June 24, eſtimate and aſcertain, according to the beſt of their judgment, the full and juſt yearly rent, which every ſuch dwelling houſe with the houſhold offices therewith occupied is worth to be let; and ſhall make an aſſeſſment of 6 d in the pound according to ſuch eſtimate upon the occupier of the premiſſes

miſſes of the yearly value of 5l and upwards, and under 50l; and of 1s in the pound, upon the occupier of the premiſſes of the yearly value of 50l and upwards: And ſhall, in writing under their hands, certify the number of houſes, together with the rents ſo aſcertained as aforeſaid, and the names of the occupiers, and the ſeveral ſums charged on them in reſpect of the ſame; and deliver the certificates or aſſeſſments ſo made by them to the commiſſioners or any two of them. *ſ.* 17.

In defect of aſſeſſors, the ſurveyor to aſſeſs.

8. If the commiſſioners ſhall at any time neglect to appoint aſſeſſors, or if the aſſeſſors by them appointed ſhall neglect to perform what is required of them; the ſurveyor may perform ſuch and the like ſervices as are required from the aſſeſſors. 19 *G.* 3. *c.* 59. *ſ.* 6.

Pariſh books may be inſpected.

9. And the commiſſioners or any two of them, the ſurveyors, aſſeſſors, or any perſons authoriſed by any of them, ſhall have liberty to inſpect and take copies of or extracts from any book or books kept by any pariſh officer or other, concerning the rates payable to the poor, or any other public taxes, rates, or aſſeſſments; and if any perſon ſhall refuſe ſuch inſpection, or to attend the ſaid commiſſioners with their books when required, he ſhall forfeit 40s. 18 *G.* 3. *c.* 26. *ſ.* 30.

And no houſe ſhall be eſtimated at any leſs value yearly than that at which the ſame ſtands legally rated and aſſeſſed to the public rates, taxes, and aſſeſſments, where ſuch premiſſes are charged by a pound rate, and according to the full annual value thereof. *ſ.* 31.

Provided, that no occupier of any dwelling houſe ſhall be charged to the poor rate or highway duty, for or in reſpect of any duties impoſed by this act; but they ſhall continue to be rated to the ſame, in ſuch manner as they were rated at the time of paſſing this act. *ſ.* 36.

Surveyor's ſurcharge.

10. The ſurveyor may examine the aſſeſſments, and if he ſhall find on his ſurvey, that any houſes have been omitted or under-rated, he ſhall certify the ſame in writing under his hand by way of ſurcharge, to two commiſſioners, at the ſame time that he makes his ſurcharge for the window duty. *ſ.* 23.

And if the ſurveyor ſhall omit to make a ſurcharge for the firſt half year, he may make a ſurcharge for the whole year. *ſ.* 24.

Signing the aſſeſſment.

11. And the commiſſioners, or any three of them, ſhall ſet their hands to the ſaid aſſeſſments, and to ſuch ſurcharge as may have been made thereto, teſtifying their allowance of the ſame. *ſ.* 20.

Appointing collectors.

12. And at the ſame time, they ſhall likewiſe appoint two of the perſons named in each of ſuch aſſeſſments to be

be collectors, or any two ſuch perſons as they ſhall think able and reſponſible; and ſhall forthwith deliver or cauſe the ſaid aſſeſſments to be delivered to them. *ſ.* 18.

13. In all privileged and other places being extra-parochial, and not within the conſtablewicks or precincts of the reſpective aſſeſſors, three commiſſioners ſhall appoint two perſons near to the ſaid places to be aſſeſſors, and two collectors in like manner. *ſ.* 19. Places exempt.

14. All perſons thinking themſelves over-rated may appeal to the commiſſioners, on the days and in the manner directed with reſpect to the window duties, giving ten days notice to the aſſeſſor and ſurveyor. *ſ.* 39, 40. Appeal.

And ſuch aſſeſſor, ſurveyor, and appellant ſhall have liberty to be preſent at hearing and determining the appeal. *ſ.* 40.

Upon the appeal, the commiſſioners ſhall not make any abatement, unleſs it appear upon oath that ſuch perſon was over-rated. *ſ.* 40.

Appeal heard and determined by the commiſſioners, or any three or more of them, or the major part of them then preſent on the appeal day, ſhall be final: Except that if the aſſeſſor, ſurveyor, or appellant, ſhall apprehend the determination to be wrong, and declare himſelf diſſatisfied therewith, he may require the commiſſioners to ſtate ſpecially and ſign the caſe, together with their determination thereupon: who ſhall ſtate and ſign the caſe accordingly, and cauſe the ſame to be delivered to the party making ſuch requeſt, to be by him tranſmitted to one of the judges; who ſhall with all convenient ſpeed return an anſwer with his opinion ſubſcribed thereto; according to which the aſſeſſment ſhall be altered or confirmed. Provided, that the determination of the commiſſioners ſhall ſtand with reſpect to the payments which ſhall become due precedent to the opinion certified by the judge. *ſ.* 41, 42.

15. The perſons appointed as aforeſaid to be collectors ſhall collect the duties, and give acquittances. *ſ.* 18. Collecting.

16. Where any perſons charged with the duty ſhall be under the age of 21 years, their parents, guardians, or tutors ſhall pay, and be allowed the ſame in their accounts. *ſ.* 28. Guardians liable for infants.

17. The collectors ſhall pay the money to the receiver general; for which payment the pariſh or place ſhall be anſwerable. Which ſaid payment ſhall be made quarterly; on Jan. 5, April 5, July 5, and October 10. *ſ.* 3, 18. Paying to the receiver general.

18. All conſtables and other his majeſty's officers ſhall be aiding and aſſiſting in the execution of this act, and Conſtables to obey the commiſſioners.

obey and execute ſuch precepts or warrants as ſhall be to them directed in that behalf, by the commiſſioners, or any three or more of them. *ſ.* 44.

Duplicates to be tranſmitted.

19. The ſaid commiſſioners, or two of them, ſhall cauſe duplicates of the aſſeſſments to be made out and tranſmitted, in like manner as of the window duties. In which duplicates ſhall be inſerted as well the number of houſes, as the amount of the duties. *ſ.* 21, 22.

House of correction.

Building or repairing houſes of correction.

1. BY the 7 *J. c.* 4. It was enacted, that before *Michaelmas* 1611, there ſhould be built or provided within every county, one or more fit and convenient houſes of correction, with convenient backſide thereunto adjoining, together with mills, turns, cards, and ſuch like neceſſary implements, to ſet rogues, vagabonds, or other idle, vagrant, and diſorderly perſons on work; which houſes were to be purchaſed, conveyed, or aſſured unto ſuch perſons, as by the juſtices in ſeſſions ſhould be directed, upon truſt that the ſame ſhould be employed for the keeping, correcting, and ſetting to work the ſaid rogues, vagabonds, or ſturdy beggars, and other idle and diſorderly perſons. *ſ.* 2.

And by the 17 *G.* 2. *c.* 5. On preſentment of the grand jury, at the aſſizes, great ſeſſions, or general gaol delivery, held for any county or liberty (or at the general ſeſſions, or general quarter ſeſſions of the peace, where there ſhall be no aſſizes great ſeſſions, or general gaol delivery held, 14 *G.* 2. *c.* 33. *ſ.* 2.) that there is no houſe of correction, and that it will be neceſſary to provide one or more; or that the houſes of correction already provided are not ſufficient or convenient, or want to be enlarged; the juſtices in ſeſſions ſhall have power to build or enlarge one or more fit houſes of correction, or to buy or hire houſes for that purpoſe, with convenient backſides or outlets thereto adjoining, or to purchaſe land, and to erect ſuch houſe or houſes upon part thereof, and to lay out the reſt of ſuch lands for ſuch backſides or outlets: and to conclude and agree upon raiſing ſuch ſums of money, as on examination of able and ſufficient workmen, or others, ſhall appear to be neceſſary for that purpoſe: And if houſes or lands are to be purchaſed, they ſhall be conveyed to ſuch perſons

perſons as the ſaid juſtices in ſeſſions ſhall direct, in truſt and for the uſes and purpoſes aforeſaid. *ſ.* 30.

And by the 22 *G.* 3. *c.* 64. The want of houſes of correction, or the inſufficiency thereof, may be preſented by a juſtice on his own view or knowledge, as well as by the grand jury; which preſentment ſhall be proceeded upon in the ſame manner as if it had been made by the grand jury. *ſ.* 6.

Viſitors appointed.

2. Two juſtices, within the reſpective hundreds, diviſions, or juriſdictions, where there ſhall be any houſe of correction, or any two juſtices appointed by the ſeſſions, ſhall viſit the ſame twice a year, or oftener if need be, and report the ſtate thereof to the next ſeſſions. 17 *G.* 2. *c.* 9. *ſ.* 31.

Fitting up the houſe.

3. And the juſtices in ſeſſions ſhall take care, that the houſes of correction (except thoſe erected or maintained by particular founders) ſhall be duly fitted up and ſupplied with implements, materials, and furniture, for keeping, relieving, employing, and correcting all idle and diſorderly perſons, rogues, vagabonds, incorrigible rogues, and others, who ſhall be ſent to, confined, or continued in the ſame; and ſhall make ſuch orders and regulations as they ſhall think fit, for the better governing and regulating the ſaid houſes, and for employing, relieving, and puniſhing the perſons therein, or for ſending them to or from thence. 17 *G.* 2. *c.* 5. *ſ.* 31.

Appointing the maſter.

4. And the juſtices in ſeſſions ſhall appoint at their will and pleaſure fit perſons (women excepted) to be governors or maſters of ſuch houſes ſo to be provided. 7 *J.* *c.* 4. *ſ.* 4. 17 *G.* 2. *c.* 5. *ſ.* 31. 22 *G.* 3. *c.* 64. *ſ.* 10.

His ſalary.

5. And for the ſaid maſter or governor's travel and care to be had in the ſaid ſervice, and for the relieving of ſuch as ſhall be weak and ſick in his cuſtody, the juſtices in ſeſſions ſhall appoint ſuch ſums yearly as they ſhall think meet, to be paid quarterly beforehand by the treaſurer (the ſaid maſter or governor giving ſufficient ſecurity for the continuance and performance of the ſaid ſervice). 7 *J.* *c.* 4. *ſ.* 6. 17 *G.* 2. *c.* 5. *ſ.* 33.

They may alſo allow him ſome proportion of the profits earned by the priſoners. 22 *G.* 3. *c.* 64. *ſ.* 9.

Aſſiſtants appointed.

6. They may alſo appoint a temporary aſſiſtant or aſſiſtants, to inſtruct the priſoners in any buſineſs or branch of manufacture which the juſtices ſhall think proper to eſtabliſh there. 22 *G.* 3. *c.* 64. *ſ.* 3.

Priſoners to be kept ſeparate.

7. The juſtices ſhall take care, that ſeparate apartments be provided in the houſe of correction, for all perſons committed upon charges of felony, or convicted of any theft

or larceny, and committed for punishment by hard labour, in order to prevent any communication between them and the other prisoners; and also proper apartments, covered or open, as shall be found most convenient for employing the several persons who are to be kept to hard labour; and they are also to provide separate apartments, in each division of the said house of correction, for the women who shall be committed thither. 22 *G.* 3. *c.* 64. *s.* 1.

Time and manner of punishment.

8. The said master shall have power to set such rogues, vagabonds, idle and disorderly persons, as shall be brought or sent to the said house, to work and labour (being able), for such time as they shall continue therein, and to punish them by putting fetters or gives upon them, and by moderate whipping: And the said rogues, vagabonds, and idle persons, during such time as they shall continue in the said house, shall in no sort be chargeable to the country for any allowance, either at their bringing in, or going forth, or during their abode there; but shall have such and so much allowance as they shall deserve by their own labour and work. 7 *J.* *c.* 4. *s.* 4. But in the case of putting handcuffs or fetters upon a prisoner, the governor shall give notice thereof to one of the visiting justices, within forty eight hours after the prisoner shall be so fettered; and he shall not continue such fettering longer than six days, without obtaining an order in writing from one of the visiting justices. 22 *G.* 3. *c.* 64. *s.* 11.

And whereas doubts may arise, where authority is given to any justice or justices, to commit offenders to the house of correction, for offences cognizable before them out of sessions, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly limited; it is enacted, that where any offender shall be committed as aforesaid, by virtue of any law in being or to be made, and the time and manner of their punishment is not expressly limited, the said justice or justices shall commit such offenders to the house of correction, there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law: And two justices (of which the justice who committed him to be one) may discharge the said offender before the sessions, if they see cause; and if he shall not be so discharged, the said sessions may either discharge him, or continue him further not exceeding three months. 17 *G.* 2. *c.* 5. *s.* 32.

And by the 22 *G.* 3. *c.* 64. The governor or keeper of every house of correction shall employ all such persons as shall

ſhall be priſoners therein, in ſome work or labour which is not ſevere, altho' ſuch priſoner was not, by the warrant of his commitment, ordered to be kept to labour; and ſhall enter a ſeparate account of the work done by every perſon under that deſcription, and account with and pay to him one half of the nett profits which he ſhall have earned, at the time of his diſcharge, and not before. *ſ.* 7.

Chaplain appointed.

9. The juſtices in ſeſſions may, if they think fit, appoint a miniſter of the church of England, reſiding near to the houſe of correction, to perform divine ſervice there every Sunday, and appoint him a ſalary not exceeding 20 l a year; but ſuch ſalary to be diminiſhed at any future ſeſſions, if the juſtices ſhall think fit. 22 *G.* 3. *c.* 64. *ſ.* 12.

Spirituous liquors not to be drank there.

10. No governor, or perſon employed under him as aſſiſtant or otherwiſe, ſhall ſell, or be capable of being licenſed to ſell, or have any benefit from the ſale of any wine, ale, beer, ſpirituous or other liquors, or any other article or thing uſed in ſuch houſe, or by any perſon confined therein, during the time of ſuch employment; and every perſon offending therein ſhall, on conviction upon oath before one juſtice, forfeit 10 l; and ſhall be diſmiſſed from his employment as governor or aſſiſtant in ſuch houſe, by order of the juſtices at their next ſeſſions, on proof made before them of the ſaid offence. And no wine, ale, ſpirituous or other liquors ſhall be brought into the houſe of correction to be drank there, unleſs for a medical purpoſe, by a written direction, under the hand of the apothecary or ſurgeon uſually attending ſuch houſe. 22 *G.* 3. *c.* 64. *ſ.* 8.

The ſaid penalty of 10 l to be levied by diſtreſs; for want of ſufficient diſtreſs, the offender to be committed to the common gaol or houſe of correction, for any time not exceeding ſix calendar months, nor leſs than one. *ſ.* 13.

Maſter to account to the ſeſſions.

11. The juſtices, at every general quarter ſeſſions, ſhall call upon the keeper of the houſe of correction, to produce to them in writing a liſt of the ſeveral perſons then in cuſtody, with a deſcription of the offence, the time for which committed, diſtinguiſhing particularly thoſe who by warrant of commitment are to be kept to hard labour, and alſo diſtinguiſhing the age and ſex of every ſuch perſon committed to hard labour, and in what trade or buſineſs he hath been employed, and what he hath been moſt accuſtomed to, and is beſt qualified for, and how he has behaved during his confinement. 22 *G.* 3. *c.* 64. *ſ.* 3.

Maſter miſbehaving.

12 If the maſter ſhall not, at every quarter ſeſſions, yield a true account of all ſuch perſons as have been committed to his cuſtody; or if any perſon committed to his cuſtody ſhall be troubleſome to the country, by going abroad; or otherwiſe ſhall eſcape away from the houſe of correction, before he ſhall be from thence lawfully delivered; the ſaid juſtices ſhall ſet down ſuch fines and penalties upon the ſaid maſter or governor, as they ſhall think fit: and all fines and penalties ſhall be paid to the treaſurer, and accounted for by him. 7 *J.* *c.* 4. *ſ.* 9.

Removing the maſter.

13. The juſtices in ſeſſions may remove the ſaid governor or maſter; and if any perſon removed by order of ſeſſions ſhall refuſe or neglect to quit poſſeſſion, for ten days after notice given him in writing by the clerk of the peace, any two juſtices (on producing to them ſuch order of ſeſſions, or an atteſted copy thereof, and on oath of one witneſs of ſuch notice having been given, and of his having refuſed or neglected to quit poſſeſſion) may by their warrant direct the ſheriff to remove him, who ſhall thereupon clear the poſſeſſion as in caſe of a writ of *habere facias poſſeſſionem*. 17 *G.* 2. *c.* 5. *ſ.* 31.

Expences of the whole.

14. And to defray the expences of erecting, purchaſing, hiring, enlarging, altering, and repairing houſes of correction, and of purchaſing land to erect them upon, and for backſides and outlets, and of fitting up and furniſhing ſuch houſes, and of ſending perſons to and from the ſame, and maintaining and employing them there, and other neceſſary charges, the juſtices in ſeſſions may cauſe the ſame to be raiſed in the ſame manner as the general county rate. 17 *G.* 2. *c.* 5. *ſ.* 33. 22 *G.* 3. *c.* 64. *ſ.* 5.

Rules and orders eſtabliſhed.

15. The following rules, orders, and regulations, for the better government of the perſons to be committed to the ſaid houſes of correction, ſhall be duly obſerved and inforced in every ſuch houſe, ſubject nevertheleſs to ſuch additions as ſhall from time to time be made by the juſtices at their Midſummer or Michaelmas ſeſſions; provided that ſuch additions ſhall not be contradictory to the rules, orders, and regulations here eſtabliſhed: And for the purpoſe of having them more generally known, and more ſtrictly attended to, the keeper ſhall cauſe the ſame to be printed in plain legible characters, and fixed in ſome conſpicuous part of every ſuch houſe of correction. 22 *G.* 3. *c.* 64. *ſ.* 4.

"Rules, orders, and regulations, to be obſerved and "inforced at every houſe of correction provided and eſta- "bliſhed, or to be provided and eſtabliſhed, under the "authority of the acts of the ſeventh year of the reign of

" his late majeſty king *James* the firſt, the ſeventeenth of " king *George* the ſecond, and the twenty ſecond of king " *George* the third.

" I. That the ſeveral perſons, who ſhall be committed " to the houſe of correction to be kept to hard labour, " ſhall be employed (unleſs prevented by ill health) every " day, during their confinement, (except Sundays, Chriſt- " maſs day, and Good Friday) for ſo many hours as the " day light in the different ſeaſons of the year will admit, " not exceeding twelve hours, being allowed thereout to " reſt half an hour at breakfaſt, an hour at dinner, and " half an hour at ſupper, and that the intervals ſhall be " noticed by the ringing of a bell.

" II. That the governor of each houſe of correction " ſhall adapt the various employments, which ſhall be di- " rected by the juſtices at their quarter ſeſſions, to each " perſon in ſuch manner as ſhall be beſt ſuited to his or " her ſtrength and ability, regard being had to age " and ſex.

" III. That the males and females ſhall be employed, " and ſhall alſo eat and be lodged, in ſeparate apartments, " and ſhall have no intercourſe or communication with " each other.

" IV. That every perſon ſo committed ſhall be ſuſ- " tained with bread, and any coarſe but wholeſome food, " and water; but perſons under the care of the phyſician, " ſurgeon, or apothecary, ſhall be ſuſtained with ſuch " food and liquor as he ſhall direct.

" V. That the governor, and ſuch other perſons (if " any) as ſhall be employed by the juſtices to aſſiſt the " governor, ſhall be very watchful and attentive in ſeeing " that the perſons ſo committed are conſtantly employed " during the hours of work; and if any perſon ſhall be " found remiſs or negligent in performing what is re- " quired to be done by ſuch perſon to the beſt of his or " her power and ability, or ſhall wilfully waſte, ſpoil, or " damage the goods committed to his or her care, the " governor ſhall puniſh every ſuch perſon in the manner " hereafter directed:

" VI. That if any perſon ſo committed ſhall refuſe to " obey the orders given by the governor, or ſhall be " guilty of profane curſing or ſwearing; or of any inde- " cent behaviour or expreſſion; or of any aſſault, quar- " rel, or abuſive words, to or with any other perſon; he " or ſhe ſhall be puniſhed for the ſame in the manner " hereafter directed:

" VII. That the governor ſhall have power to puniſh " the ſeveral offenders for the offences herein before de-

" ſcribed, by cloſer confinement; and ſhall enter in a " book, to be kept by him for the inſpection of the juſ- " tices at the quarter ſeſſions, and the viſiting juſtice or " juſtices, the name of every perſon who ſhall be ſo pu- " niſhed by him, expreſſing the offence, and the duration " of the puniſhment inflicted."

Form of a commitment to the houſe of correction.

Weſtmorland. { *J. P.* eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, to the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

THESE *are to command you the ſaid conſtable in his ſaid majeſty's name forthwith to convey and deliver into the cuſtody of the ſaid keeper of the ſaid houſe of correction the body of* A. O. *being charged before me* [or, *convicted before me*, or otherwiſe as the caſe ſhall be: And here ſet forth the offence.] *And you the ſaid keeper are hereby required to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep, until* —— [or, *for the ſpace of* ——— And here ſet forth the time, and the manner of puniſhment.] *Herein fail you not. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of* ——

Concerning *Penitentiary* houſes for the puniſhment of convicts, See title **Tranſportation.**

Hue and cry.

Meaning of the words.

1. LORD *Coke* ſaith, that hue and cry (called in ancient records *huteſium & clamor*) do mean the ſame thing; for that *huer* in *French* is to hoot or ſhout, in *Engliſh* to cry. 2 *Inſt.* 173. 3 *Inſt.* 116.

But ſince it appeareth by the old books (of which alſo lord *Coke* maketh obſervation, 2 *Inſt.* 173.) that hue and cry was anciently both by horn and by voice, it may ſeem that theſe two words are not ſynonymous, but that this *huteſium* or *hooting* is by the *horn*, and *crying* by the *voice*; with

with which alſo accordeth the *French* word *huchet*, which ſignifieth a huntſman's horn: So that hue and cry in this ſenſe will properly ſignify a purſuit by horn and by voice. Which kind of purſuit of robbers by blowing a horn, and by making an outcry, is ſaid to be practiſed alſo in *Scotland*.

And this blowing of a horn, by way of notice or intelligence, in other caſes as well as in the purſuit of felons, ſeemeth to have been in uſe of very ancient time: for amongſt the laws of *Wihtred* king of *Kent*, in the year 696, this is one; that "if a ſtranger go out of the road, "and neither ſhout nor blow a horn, he ſhall be taken "for a thief."

Hue and cry, what.

2. Hue and cry is the old common law proceſs after felons, and ſuch as have dangerouſly wounded any perſon: And this hath received great countenance and authority by ſeveral acts of parliament. 2 *H. H.* 98.

Watches to be kept.

3. To prevent felonies; In walled towns the gates ſhall be ſhut from ſun ſetting to ſun riſing: and none ſhall lodge without the town, from nine of the clock till day, unleſs his hoſt will anſwer for him. In other towns, watches ſhall be kept: and if a watchman arreſt a night walker, and he diſobey and fly, the watchman may make hue and cry. 13 *Ed.* 1. *ſt.* 2. *c.* 4.

Application to the conſtable.

4. When any felony is committed, or any perſon is grievouſly and dangerouſly wounded, or any perſon aſſaulted and offered to be robbed, either in the day or night; the party grieved, or any other, may reſort to the conſtable of the vill; and, 1. Give him ſuch reaſonable aſſurance thereof, as the nature of the caſe will bear. 2. If he knows the name of him that did it, he muſt tell the conſtable the ſame. 3. If he knows it not, but can deſcribe him, he muſt deſcribe his perſon, or his habit, or his horſe, or ſuch circumſtances as he knows, which may conduce to his diſcovery. 4. If the thing be done in the night, ſo that he knows none of theſe circumſtances, he muſt mention the number of the perſons, or the way they took. 5. If none of all theſe can be diſcovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the conſtable with the fact, and deſire him to ſearch in his town for ſuſpected perſons, and to make hue and cry after ſuch as may be probably ſuſpected, as being perſons vagrant in the ſame night; for many circumſtances may *ex poſt facto* be uſeful for diſcovering a malefactor, which cannot be at firſt found. 2 *H. H.* 100, 101. 3 *Inſt.* 116.

Juſtice's warrant.

5. For levying hue and cry, altho' it is a good courſe to have the warrant (A) of a juſtice of the peace, when time

time will permit, in order to prevent cauſeleſs hue and cry; yet by the frame of the ſtatutes, it is by no means neceſſary, nor is it always convenient; for the felon may eſcape before the warrant be obtained, and hue and cry was part of the law, before juſtices of the peace were firſt inſtituted. 2 *H. H.* 99.

Conſtable to raiſe the town.

6. And the duty of the conſtable is, to raiſe the power of the town, as well in the night as in the day, for the proſecution of the offender. 3 *Inſt.* 116.

And to ſearch.

7. And upon hue and cry levied againſt any perſon, or where any hue and cry comes to a conſtable, whether the perſon be certain or uncertain, the conſtable may ſearch ſuſpected places within his vill, for the apprehending of the felons. 2 *H. H.* 103.

Breaking doors to ſearch.

8. But tho' he may ſearch ſuſpected places or houſes, yet his entry muſt be by the doors being open; for he cannot break open doors barely to ſearch, unleſs the perſon againſt whom the hue and cry is levied be there, and then it is true he may; therefore in caſe of ſuch a ſearch, the breaking open the door is at his peril, namely, juſtifiable, if he be there; not juſtifiable, if he be not there: But it muſt be always remembered, that in caſe of breaking open a door, there muſt be firſt a notice given to them within of his buſineſs, and a demand of entrance, and a refuſal, before the doors can be broken. 2 *H. H.* 103. 2 *Haw.* 86.

Notice to the next conſtable.

9. If the perſon, againſt whom the hue and cry is raiſed, be not found in the conſtablewick, then the conſtable ſhall give notice to the next conſtable, and he to the next, until the offender be found, or till they come to the ſea-ſide. And this was the law before the conqueſt. 3 *Inſt.* 116.

And to the next.

10. And the officer of the town where the felony was done, as alſo every officer to whom the hue and cry ſhall afterwards come, ought to ſend to every other town round about him, and not to one next town only. And in ſuch caſes it is needful to give notice in writing (to the purſuers) of the things ſtolen, and of the colour and marks thereof, as alſo to deſcribe the perſon of the felon, his apparel, horſe, and the like, and which way he is gone, if it may be. *Dalt. c.* 54.

What ſhall be done where the perſon cannot be deſcribed.

11. But if the hue and cry be upon a robbery, burglary, manſlaughter, or other felony committed, but the perſon that did the fact is neither known nor deſcribable by perſon, clothes, or the like, yet ſuch a hue and cry is good, as hath been ſaid, and muſt be purſued, tho' no perſon certain be named or deſcribed. 2 *H. H.* 103.

And

And therefore in this caſe, all that can be done is, for thoſe that purſue the hue and cry, to take ſuch perſons as they have probable cauſe to ſuſpect; as for inſtance, ſuch perſons as are vagrants, or ſuch ſuſpicious perſons as come late into their inn or lodgings, and give no reaſonable account where they had been, and the like. *id.*

All perſons ſhall follow the hue and cry.

12. By the ſtatute of the 3 *Ed.* 1. *c.* 9. All ſhall be ready, and apparelled, at the commandment and ſummons of ſheriffs (or conſtables, 2 *Inſt.* 171.) and at the cry of the country, to ſue and arreſt felons; on pain of a grievous fine. And if default be found in the lord of the franchiſe, the king ſhall take the franchiſe to himſelf; and if in the ſheriff or other officer, they ſhall have one year's impriſonment, and ſhall make a grievous fine.

And by the ſtatute of the 13 *Ed.* 1. *ſt.* 2. *c.* 1. It is likewiſe enacted, that immediately upon robberies and felonies committed, freſh ſuit ſhall be made, from town to town, and from county to county.

And no hue and cry ſhall be lawful, except it be by horſemen and footmen. 27 *El. c.* 13. *ſ.* 10.

And the life of hue and cry is freſh ſuit. 3 *Inſt.* 117.

Breaking doors to arreſt upon purſuit.

13. If the perſon purſued by hue and cry be in a houſe, and the doors are ſhut, and refuſed to be opened on demand of the conſtable, and notification of his buſineſs, he may break open the doors; and this he may do in any caſe where he may arreſt, though it be only a ſuſpicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the caſe: And the ſame law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 *H. H.* 102.

Killing in the purſuit.

14. And it ſeems in this caſe, that if he cannot be otherwiſe taken, he may be killed; and the neceſſity excuſeth the conſtable. 2 *H. H.* 102.

Arreſting an innocent perſon.

15. If hue and cry be raiſed againſt a perſon certain for felony, though poſſibly he is innocent; yet the conſtables, and thoſe that follow the hue and cry, may arreſt and impriſon him in the common gaol, or carry him to a juſtice of the peace, to be examined where he was at the time of the felony committed, and the like. 2 *H. H.* 102.

Arreſting a perſon by deſcription.

16. If the hue and cry be not againſt a perſon certain, but by deſcription of his ſtature, perſon, clothes, horſe, and the like; yet the hue and cry doth juſtify the conſtable or other perſon following it, in apprehending the perſon ſo deſcribed, whether innocent or guilty: For that is his warrant; it is a kind of proceſs that the law allows of,

of, not uſual in other caſes, namely, to arreſt a perſon by deſcription. 2 *H. H.* 103.

Caſe of arreſting upon hue and cry levied without cauſe.

17. In caſe of hue and cry once raiſed and levied, on ſuppoſal of a felony committed, though in truth there was no felony committed, yet thoſe that purſue hue and cry, may arreſt and proceed, as if ſo be a felony had been really committed.

And therefore the juſtification of an impriſonment by a perſon upon ſuſpicion, and by a perſon (eſpecially a conſtable) upon hue and cry levied, do extremely differ; for in the former caſe, there muſt be a felony averred to be done, and it is iſſuable; but in the latter, to wit, upon hue and cry it need not be averred, but the hue and cry levied upon information of a felony is ſufficient, though perchance the information were falſe.

And the reaſons hereof are theſe; 1. Becauſe the conſtable cannot examine the truth or falſehood of the ſuggeſtion of him that firſt levied it, for he cannot adminiſter to him an oath; and if he ſhould forbear his purſuit of the hue and cry till it be examined by a juſtice of the peace, the felon might eſcape, and the purſuit would be loſt and fruitleſs. 2. Becauſe the conſtable is by the ſeveral acts of parliament compellable to purſue hue and cry; and he is puniſhable, and ſo are thoſe of the vill, if they do it not. 3. Becauſe he that firſt raiſeth a hue and cry, where no felony is committed, that is, he who giveth the falſe information, is ſeverely puniſhable by fine and impriſonment, if the information be falſe.

And therefore if he raiſe hue and cry upon a perſon that is innocent, yet they that purſue the hue and cry may juſtify the impriſonment of that innocent perſon; and the raiſer is puniſhable: And by the ſame reaſon, if he give notice of a felony committed, where there was in truth none.

And here the juſtification of the impriſonment is mixed, partly upon the hue and cry, and partly upon their own ſuſpicion; and therefore, 1. In reſpect that it is upon hue and cry there needs no averment, that the felony was done, if the arreſt be by that conſtable that firſt received the information, and ſo raiſed the hue and cry; or if the arreſt were made by that conſtable, or thoſe vills to whom the hue and cry came at the ſecond hand, it muſt be averred that ſuch a hue and cry came to them, purporting ſuch a felony to be done. 2. But alſo inaſmuch as the hue and cry neither names nor deſcribes the perſon of the felon, but only the felony committed, and therefore the arreſt of this or that particular perſon is left to the ſuſpicion and diſcretion of the conſtable, or of the people of the ſecond or third vill, he that arreſts any perſon upon

ſuch

ſuch general hue and cry, muſt aver that he ſuſpected, and ſhew a reaſonable cauſe of ſuſpicion.

But now by the ſtatute of 7 *J. c.* 5. the conſtable, or any that come to his aſſiſtance, even in this caſe of hue and cry, may plead the general iſſue, and give the whole matter of the juſtification in evidence; for the purſuit of hue and cry, tho' performed by others as well as the conſtable, is principally the act of the conſtable of the vill, and the others are but as his deputies or aſſiſtants, within the precincts of their conſtablewick. 2 *H. H.* 101, 2, 3, 4.

Perſons taken on hue and cry, how far bailable.

18. It ſeems that they who are taken upon freſh hue and cry, are not bailable, as being to be accounted amongſt thoſe perſons, who are under a violent preſumption of guilt. 2 *Haw.* 98.

High conſtables to preſent thoſe who purſue not hue and cry.

19. By the 13 *Ed.* 1. *ſt.* 2. *c.* 6. Conſtables of hundreds ſhall be choſen, who ſhall preſent before juſtices aſſigned, defaults of the ſuits of towns, and all ſuch as lodge ſtrangers in uplandiſh towns, for whom they will not anſwer.

Puniſhment of thoſe who follow not hue and cry.

20. And they which levy not hue and cry, or purſue not upon hue and cry, may be indicted, fined, and impriſoned. 3 *Inſt.* 117.

Power of the leet to inquire thereof.

21. And it is an article of the leet to inquire of hues and cries levied and not purſued. 18 *Ed.* 2.

A. Warrant to levy hue and cry on a robbery having been committed.

Weſtmorland. { To all conſtables and other officers, as well in the ſaid county of *Weſtmorland*, as elſewhere, to whom the execution hereof doth or ſhall belong.

WHEREAS A. I. *of* —— *in the county of* —— *yeoman, hath this day made information upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *that on this preſent* —— *day of* —— *in the* —— *year of the reign of* —— *betwixt the hours of three and four in the afternoon of the ſame day, at a place called* —— *in the ſaid county of* W. *in the king's highway there, two malefactors and felons, to him the ſaid* A. I. *unknown, in and upon him the ſaid* A. I. *then and there being in the peace of God and of our lord the king, feloniouſly did make an aſſault, and him the ſaid* A. I. *then and there feloniouſly did put in great fear and danger of his life, and the ſum of* —— *of lawful money of* Great Britain, *of the goods and chattels of him the ſaid* A. I. *from the perſon, and againſt the will of him the ſaid* A. I. *then and there violently and felo-*

feloniouſly did ſteal, take and carry away; and that one of the ſaid malefactors and felons, to him the ſaid A. I. *unknown, is a tall, ſtrong man, and ſeemeth to be about the age of ——— years, is pitted in the face with the ſmall pox, and hath the ſcar of a wound under his left eye, and had then on a dark brown riding coat,* &c. *and did ride upon a bay gelding with a ſtar on his forehead; and the other,* &c. *And that after the ſaid felony and robbery committed, they the ſaid malefactors and felons, to him the ſaid* A. I. *unknown, did fly, and withdraw themſelves to places unknown, and are not yet apprehended: Theſe are therefore to command you forthwith to raiſe the power of the towns within your ſeveral precincts, and to make diligent ſearch therein, for the perſons above deſcribed, and to make freſh purſuit and hue and cry after them from town to town, and from county to county, as well by horſemen as by footmen; and to give due notice hereof in writing, deſcribing in ſuch notice the perſons and the offence aforeſaid, unto every next conſtable on every ſide, until they ſhall come to the ſea ſhore, or until the ſaid malefactors and felons ſhall be apprehended; and all perſons whom you or any of you ſhall, as well upon ſuch ſearch and purſuit, as otherwiſe, apprehend or cauſe to be apprehended, as juſtly ſuſpected for having committed the ſaid robbery and felony, that you do carry forthwith before ſome one of his ſaid majeſty's juſtices of the peace in and for the county where he or they ſhall be ſo apprehended, to be by ſuch juſtice examined, and dealt withal according to law. And hereof fail you not reſpectively, upon the peril that ſhall enſue thereon. Given under my hand and ſeal, at ——— in the ſaid county of* W. *the ——— day of ——— aforeſaid, in the year aforeſaid.*

[Supplementary to this ancient eſtabliſhment, may be conſidered Sir *John Fielding*'s excellent plan for the diſcovery of offenders, after they have eſcaped the freſh purſuit upon hue and cry, by ſending immediate notice to a certain known office in *London*, from whence are iſſued accounts to every part of the kingdom, deſcribing the offence and the offenders, with as much minuteneſs as the caſe will admit of: Whereby many notorious offenders have been apprehended, and much ſtolen property hath been recovered. The reaſon why nothing of this kind was attempted in ancient times is very evident. Before the invention of printing, it was impoſſible to tranſmit ſo many notices as are requiſite for the completion of this comprehenſive ſcheme; and in thoſe ages, when commerce was little known, the conveyance by the poſt was tedious, dilatory, and uncertain. It might be wiſhed, that the legiſlature would in ſome ſort think this inſtitution an ob-

ject

ject of their attention, in order to give it a degree of permanency, in proportion as it hath been found beneficial.]

Hundred.

IN ancient times, before the conqueſt, it was ordained for the more ſure keeping of the peace, that all free born men ſhould caſt themſelves into ſeveral companies, by ten in each company; and that every of thoſe ten men ſhould be ſurety and pledge for the forthcoming of his fellows. For which cauſe, theſe companies in ſome places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, ſo becauſe it was then alſo appointed, that ten of theſe companies ſhould at certain times meet together for their matters of greater weight, therefore that general aſſembly was, and yet is called an hundred. *Lamb. Conſt.* Hundred whence ſo called.

2. If any homicide be committed, or dangerous wound given, in the day time, and the offender eſcape, the town ſhall be amerced; and if out of a town, the hundred ſhall be amerced. 2 *Haw.* 74. Hundred to be amerced for an eſcape.

3. The hundred ſhall make good the damages, in caſes of robbery; cutting banks; cutting hop-binds; burning houſes, barns, outhouſes, hovels, cocks, mows, or ſtacks of corn, ſtraw, hay, or wood; mines or pits of coal; deſtroying granaries, or corn intended for exportation; deſtroying turnpikes; or works of navigable rivers; and the like: As may be ſeen under their proper titles. Hundred anſwerable in divers other caſes.

4. Writs of execution which ſhall be ſued out againſt the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, ſhall by the ſheriff on receipt thereof be produced to two juſtices, (1 Q.) in or near the hundred; who ſhall cauſe a taxation to be made and levied by the conſtables in 30 days, for paying the plaintiff's coſts and damages, and alſo all ſuch neceſſary expences, as any inhabitants ſhall have been at in defending ſuch action; the ſame being firſt proved on oath before the ſaid juſtices; and the attorney's bill taxed. And the ſaid ſums ſhall be paid to the ſheriff by the conſtables in ten days after the time is expired for collecting; and by the ſheriff, to the perſons intitled to receive the ſame, Damages how to be levied.

without

without any deduction or fee; all in the ſame manner, as is directed by the ſtatute of the 8 *G.* 2. *c.* 16. in caſes of robbery. 22 *G.* 2. *c.* 46. *ſ.* 34.

Hunting. See **Game.**
Huſband. See **Wife.**

Ideots. See **Lunaticks.**
Impriſonment. See **Arreſt, Commitment.**
Inceſt. See **Lewdneſs.**

Incloſures, *pulling down.*

BY the 13 *Ed.* 1. *ſt.* 1. *c.* 46. Where ſometimes it chanceth, that one having a right to approve, doth then levy a dyke or an hedge, and ſome by night, or at another ſeaſon, when they ſuppoſe not to be eſpied, do overthrow the hedge or dyke, and it cannot be known by verdict of the aſſize or jury, who did overthrow the hedge or dyke, and men of the towns near will not indict ſuch as be guilty of the fact; the towns near adjoining ſhall be diſtrained to levy the hedge or dyke at their own coſt, and to yield damages.

And ſuch perſon as ſhall bring an aſſize thereupon, and have judgment to recover, ſhall have his damages trebled by the judgment of the court. 3 & 4 *Ed.* 6. *c.* 6.

And by the 9 *G.* 3. *c.* 29. If any perſon ſhall wilfully or maliciouſly demoliſh, pull down, or otherwiſe deſtroy or damage, any fence made for dividing or incloſing any common, waſte, or other lands or grounds in purſuance of any act of parliament, or ſhall cauſe or procure the ſame to be done; he ſhall be guilty of felony, and tranſported for 7 years. Proſecution to be commenced in 18 months after the offence committed.

Indictment.

I. Indictment, what.
II. What offences are indictable.
III. Within what time an indictment ſhall be brought.
IV. How far ſeveral offenders or ſeveral offences may be joined in one indictment.
V. Whether the grand jury may examine witneſſes againſt the king.
VI. How many witneſſes are requiſite to an indictment.
VII. Whether a grand jury may find an indictment ſpecially.
VIII. Indictment to be in Engliſh.
IX. Form of an indictment.
X. Charges of an indictment.
XI. Acquittal on an indictment.

I. Indictment, what.

INDICTMENT cometh of the *French* word *enditer*, and ſignifieth in law, an accuſation found by an inqueſt of twelve or more upon their oath. And as the *appeal* is ever the ſuit of the party; ſo the indictment is always the ſuit of the king, and as it were his declaration; and the party who proſecutes it, is a good witneſs to prove it. And when ſuch accuſation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *preſentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquiſition*. 1 Inſt. 126. 2 Haw. 209.

II. What offences are indictable.

There can be no doubt, but that all capital crimes whatſoever, and alſo all kinds of inferior crimes of a publick nature, as miſpriſions, contempts, diſturbances of the peace, oppreſſions, and all other miſdemeanors whatſoever of a publick evil example againſt the *common law*, may be indicted: but no injuries of a private nature, unleſs they ſome way concern the king. 2 *Haw.* 210.

Alſo it ſeems to be a good general ground, that wherever a *ſtatute* prohibits a matter of publick grievance to the liberties and ſecurity of a ſubject; or commands a matter of publick convenience, as the repairing of the common ſtreets of a town; an offender againſt ſuch ſtatute is puniſhable, not only at the ſuit of the party grieved, but alſo by way of indictment for his contempt of the ſtatute, unleſs ſuch method of proceeding do manifeſtly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought by the party (as it is ſaid that he may in every action for doing a thing prohibited by ſtatute); it ſeems queſtionable, whether he may afterwards be indicted, becauſe that would make him liable to a ſecond fine for the ſame offence. 2 *Haw.* 210.

But if a ſtatute extend only to *private* perſons, or if it extend to all perſons in general, but chiefly concern diſputes of a private nature, as thoſe relating to diſtreſſes made by lords on their tenants; it is ſaid that offences againſt ſuch ſtatutes will hardly bear an indictment. 2 *Haw.* 211.

Alſo where a ſtatute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it ſeemeth to be ſettled at this day, that it will not maintain an indictment. 2 *Haw.* 211. *Str.* 679.

But lord *Hale* diſtinguiſhes upon this, and ſays, that if a ſtatute prohibit any act to be done, and by a ſubſtantive clauſe gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the *prohibitory clauſe*, and thereupon fined, but not to recover the penalty; but then it ſeems the fine ought not to exceed the penalty: but if the act be not prohibitory, but only that if any perſon ſhall do ſuch a thing, he ſhall forfeit ſo much, to be recovered by action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding muſt be by action, bill, plaint, or information. 2 *H. H.* 171.

Alſo, where a ſtatute adds a further penalty, to an offence prohibited by the common law; there can be no doubt, but that the offender may be ſtill indicted, if the proſecutor thinks fit, at the common law. And if the indictment for ſuch offence conclude *againſt the form of the ſtatute*, and cannot be made good as an indictment upon the ſtatute, it ſeems to be now ſettled, that it may be maintained as an indictment at common law. 2 *Haw.* 211.

In the caſe of *K.* and *Balme*, *T.* 17 *G.* 3. The defendants were indicted for diſobeying an order of juſtices up

on

on the ſtatute 13 *G.* 3. *c.* 78. for the widening of a highway. It was objected, that a ſummary method of proceeding before the juſtices being directed by the ſtatute, the proſecution ought to have been in that form, and not by way of indictment. But by the court, diſobeying an order of juſtices is an offence at common law; and therefore the proſecutor might proceed either way: the penalty given by the ſtatute is only accumulative. *Cowper.* 648.

III. Within what time an indictment ſhall be brought.

By the 31 *El. c.* 5. All indictments upon any ſtatute penal, whereby the forfeiture is limited to the king, ſhall be ſued within two years after the offence committed: if the forfeiture is limited to the king and proſecutor, the ſuit ſhall be in one year; and in default thereof, the ſame ſhall be ſued for the king, within two years after that year ended. But where a ſtatute limits a ſhorter time, the ſuit ſhall be brought within ſuch time limited.

But for indictments of felonies and other miſdemeanors where there is no forfeiture to the king, or to the king and proſecutor, no time is limited by any ſtatute; but the ſeveral acts of general pardon have the effect of a like limitation. The laſt act of which kind was that of the 20 *G.* 2. *c.* 52. for certain offences committed before *June* 15, 1747.

IV. How far ſeveral offenders or ſeveral offences may be joined in one indictment.

1. If there be *one offender*, and *ſeveral offences* committed by him, as burglary and larceny, they may be contained in one indictment. 2 *H. H.* 173.

But in the caſe of *K.* and *Clendon*, *T.* 4 *G.* 2. There was an indictment ſetting forth, that the defendant made an aſſault upon *Sarah Beatniff* and *Elizabeth Cooper*, and did them beat, wound, and evil intreat. After verdict for the king, it was moved in arreſt of judgment, that theſe were diſtinct offences, and required different and diſtinct judgments, and might require different and diſtinct fines, and therefore could not be joined in one and the ſame indictment, but there ought to have been a ſeveral indictment for each; and of that opinion was the court, and the judgment was arreſted. *Strange* 870. *L. Raym.* 1572. But in the caſe of the *King* againſt *Benfield* and *Saunders*, *E.* 33 *G.* 2. the court held this caſe of *Clendon* not to be law; and ſaid, cannot the king call a man to account for

a breach of the peace, becauſe he broke two heads inſtead of one? It is a proſecution in the king's name, for the offence charged; and not in the nature of an action, where each perſon injured is to recover ſeparate damages. *Burr. Mansf.* 984.

2. If there be *ſeveral offenders* that commit the ſame *offence*, though in law they are ſeveral offences in relation to the ſeveral offenders, yet they may be joined in one indictment; as if ſeveral commit a robbery, or burglary, or murder. 2 *H. H.* 173.

So in the aforeſaid caſe of *K.* v. *Benfield* and *Saunders*, which was for the defendants ſinging a libellous ſong againſt *John* and *Jane Cooke*, the court held, that this being a joint act, done by both, (for they had both joined in the act of ſinging the libellous matter), therefore they might well be joined in one and the ſame indictment. *Burr. Mansf.* 985.

3. And ſo it is, though the offences are of *ſeveral degrees*, but dependent one upon another, as the principal in the firſt degree, and the principal in the ſecond degree, to wit, preſent, aiding and abetting the principal, and acceſſary before or after. 2 *H. H.* 173.

4. Alſo ſeveral perſons may be indicted in the ſame indictment for *ſeveral offences of the ſame nature*, as for keeping diſorderly houſes; but the indictment ought to ſet forth that they ſeverally did ſo. 2 *H. H.* 173.

And this is only to be underſtood, where the offences may be joint, as in extortion, maintenance, receiving ſtolen goods, and the like; and not where the offence is a ſeparate act in each, as in the caſe of *K.* againſt *Philips* and others, *M.* 5 *G.* 2. Six were indicted in one indictment for *perjury*, and four of them pleading, were convicted. It was moved in arreſt of judgment, that the crime of perjury is in its nature ſeveral, and two cannot be indicted together. And by the court, There may be great inconveniences if this is allowed; one may be deſirous to have a certiorari, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence againſt one: And they cited a caſe, *T.* 6 *An. Q.* againſt *Hodgſon* and others, where two were indicted for being ſcolds, and compared to barratry, and it was held not to lie. And in the principal caſe judgment was arreſted. *Str.* 921.

In like manner, *E.* 11 *G. K.* againſt *Weſton* and others. There was an indictment againſt ſix jointly and ſeverally for exerciſing a trade; and quaſhed, becauſe there ought to be diſtinct indictments. *Str.* 623.

5. Larcenies

5. Larcenies committed of ſeveral things, though *at ſeveral times*, and *from ſeveral perſons*, may be joined in one indictment. 2 *H. H.* 173.

V. Whether the grand jury may examine witneſſes againſt the king.

Lord *Hale* ſays, that the grand jury at the aſſizes or ſeſſions ought only to hear the evidence for the king, and in caſe there be probable evidence, they ought to find the bill, becauſe it is but an accuſation, and the party is to be put on his trial afterwards. 2 *H. H.* 157.

Which doctrine is alſo laid down by chief juſtice *Pemberton*, in the caſe of the earl of *Shaftſbury*, St. Tr. V. 3. p. 415.

But the learned editor of *Hale's Hiſtory* obſerves upon this, that Sir *John Hawles* in his remarks on the ſaid caſe, *St. Tr. V.* 4. *p.* 183. unanſwerably ſhews, that a grand jury ought to have the ſame perſuaſion of the truth of the indictment as a petty jury, or a coroner's inqueſt; for they are ſworn to preſent the truth, and nothing but the truth.

And lord *Coke* ſays, that ſeeing indictments are the foundation of all, and are commonly found in the abſence of the party accuſed, it is neceſſary there ſhould be ſubſtantial proof. 3 *Inſt.* 25.

VI. How many witneſſes are requiſite to an indictment.

An indictment may be found upon the oath of one witneſs only, unleſs it be for high treaſon, which requires two witneſſes. 2 *Haw.* 256. And unleſs, in any inſtance, it be otherwiſe ſpecially directed by act of parliament.

VII. Whether the grand jury may find an indictment ſpecially.

It ſeems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part falſe; but muſt either find a true bill or *ignoramus* for the whole; and that if they take upon them to find it ſpecially, or conditionally, or to be true for part only, and not for the reſt, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 *Haw.* 210.

But where there are two counts in the indictment, as one for a riot, another for an aſſault; the ſame may be conſi-

dered as two distinct indictments; and the jury may affirm the bill as to one of the counts, and reject it as to the other. *Cowper*. 325.

VIII. Indictment to be in English.

All indictments, informations, inquisitions and presentments, shall be in *English*, and be written in a common legible hand, and not court hand; on pain of 50*l*, to him that shall sue in three months. 4 *G*. 2. *c*. 26. 6 *G*. 2. *c*. 14.

IX. Form of an Indictment.

In order to understand this matter rightly it is judged requisite first to insert the entire form of an indictment, and then to take it in pieces, and explain the several parts of it in their order.

The instance which is chosen is on the statute of stabbing. 1 *J*. *c*. 8.

The *caption* of the indictment is no part of the indictment itself, but is the style or preamble, or return that is made from an inferior court to a superior, from whence a certiorari issues to remove; or when the whole record is made up in form; for whereas the record of the indictment, as it stands upon the file in the court where it is taken, is only thus, *The jurors for our lord the king upon their oath present*; when this comes to be returned upon a certiorari, it is more full and explicit, as follows; 2 *H*. *H*. 166.

Westmorland. AT *the general quarter sessions of the peace holden at* Appleby *in and for the county aforesaid, the seventh day of* April *in the first year of the reign of our sovereign lord* George *the third of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth, Before* J. P. *and* K. P. *esquires, and others their associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of —— good and lawful men of the county aforesaid, sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid, it is presented*;

That John Armstrong *late of* Appleby *in the county aforesaid, yeoman, not having God before his eyes, but being moved and*

and ſeduced by the inſtigation of the devil, on the thirtieth day of March in the firſt year of the reign of our ſaid ſovereign lord George *the third of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at the hour of nine in the afternoon of the ſame day, with force and arms, at* Appleby *aforeſaid in the county aforeſaid, in and upon one* George Harriſon *in the peace of God and of our ſaid lord the king then and there being (the aforeſaid* George Harriſon *not having any weapon then drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong*) feloniouſly did make an aſſault; and that the aforeſaid* John Armſtrong, *with a certain drawn ſword of the value of five ſhillings, which he the ſaid* John Armſtrong *in his right hand then and there had and held, the ſaid* George Harriſon *in and upon the right ſide of the belly near the ſhort ribs of him the ſaid* George Harriſon *(the aforeſaid* George Harriſon *as is aforeſaid then and there not having any weapon drawn, nor the aforeſaid* George Harriſon *then and there having firſt ſtricken the ſaid* John Armſtrong*) then and there feloniouſly did ſtab and thruſt, giving unto the ſaid* George Harriſon *then and there with the ſword aforeſaid, in form aforeſaid, in and upon the right ſide of the belly near the ſhort ribs of him the ſaid* George Harriſon *one mortal wound of the breadth of one inch, and of the depth of nine inches; of which ſaid mortal wound, he the ſaid* George Harriſon *then and there inſtantly died: And ſo the jurors aforeſaid upon their oath aforeſaid do ſay, that the ſaid* John Armſtrong *him the ſaid* George Harriſon *on the aforeſaid thirtieth day of* March *in the year aforeſaid, at* Appleby *aforeſaid in the county aforeſaid, in manner and form aforeſaid, feloniouſly did kill; againſt the peace of our ſaid lord the now king, his crown and dignity, and againſt the form of the ſtatute in ſuch caſe made and provided.*

Weſtmorland.] The name of the county muſt be in the margin, or repeated in the body of the caption. 2 *H. H.* 166.

At the general quarter ſeſſions of the peace] The court where the indictment is made, muſt be expreſſed; otherwiſe the caption is erroneous. 1 *H. H.* 166. 2 *Haw.* 252.

Holden at Appleby *in and for the county aforeſaid*] It muſt appear where the ſeſſions was held; and that the place, where it was held, is within the extent of the commiſſion. 2 *H. H.* 166.

The ſeventh day of April *in the firſt year of the reign of our ſovereign lord* George *the third*] It hath been adjudged, that if the caption of the indictment deſcribe the ſeſſions holden

in the time paſt, and not in the time preſent; or as holden on ſuch a day in ſuch a year of the king, without aſcertaining what king, it is inſufficient. But it ſeems to be agreed, that it is ſufficient to expreſs the year of the king, without adding that of our lord. 2 *Haw.* 255.

The ſeventh day] Figures to expreſs numbers are not allowable in an indictment; but numbers muſt be expreſſed in words. 2 *H. H.* 170. *Cr. Cir.* 109. *Audr.* 137. *H.* 11 *G.* 2. *K.* and *Haddock.* Or at leaſt in *Roman* numerals. *Str.* 261. *H.* 6 *G. K.* and *Philips.*

Before J. P. and K. P. *eſquires, and others their aſſociates*] It is not neceſſary to name all the juſtices, but only ſo many as are enabled to hold a ſeſſions, and the reſt may be ſupplied by the words *and others their aſſociates.* 2 H. H. 167.

And altho' no ſeſſions can be held without one of the juſtices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them, are of the *quorum*, for it is ſufficient if *de facto* the ſeſſions be held before him or them that are of the *quorum*, altho' not ſo mentioned, and ſo is the uſual courſe. 2 *H. H.* 167.

And alſo to hear and determine, &c.] Theſe words are neceſſary, becauſe without this clauſe (by the commiſſion) they cannot proceed by indictment. 2 *H. H.* 166. *Str.* 442.

By the oath] If the caption concludes that *it is preſented* without ſaying *on their oath*, it ſhall be quaſhed; for their preſentment muſt be upon oath, and ſo returned. 2 *H. H.* 168.

By the oath of———] It muſt name the jurors that preſented the offence; and therefore by the oath of *A. B. C. D.* and others, is not good; for it may be the preſentment was by a leſs number than 12, or that ſome one of them was incapacitated who might influence all the reſt, as for inſtance a perſon outlawed; in which caſe the indictment may be quaſhed by plea. 2 *H. H.* 167.

Good and lawful men of the county aforeſaid] Theſe words alſo, lord *Hale* ſaith, are neceſſary. 2 *H. H.* 167. But Mr. *Hawkins* ſays, they have been often over-ruled; becauſe all men ſhall be intended to be honeſt and lawful, till the contrary appear. 2 *Haw.* 215.

Sworn and charged to inquire for our ſaid lord the king, and for the body of the county aforeſaid] Theſe words alſo ſeem requiſite to be inſerted. 2 *H. H.* 167. But yet do not ſeem to be abſolutely neceſſary. L. *Raym.* 710.

It

It is preſented; *that* John Armſtrong, *late of* Appleby *in the county aforeſaid, yeoman*] The name of the party indicted regularly ought to be inſerted, and inſerted truly in every indictment. 2 *H. H.* 175.

But the inhabitants of a pariſh, may be indicted for not repairing the highway, although no perſon is particularly named. *Wood, b.* 4. *c.* 5.

It is ſaid that no perſon indicted can take any advantage of a miſtaken ſurname in the indictment, notwithſtanding ſuch ſurname hath no manner of affinity with its true one, and he was never known by it. 2 *Haw.* 230, 1, 2, 3. 2 *H. H.* 176.

But the miſtake in the chriſtian name is pleadable, and the party ſhall be diſmiſſed from that indictment. 2 *H. H.* 176.

But the ſafeſt way is to allow his plea of *miſnomer*, both as to his ſurname and as to his chriſtian name, for he that pleads *miſnomer* of either, muſt in the ſame plea ſet forth what his true name is, and then he concludes himſelf, and if the grand jury be not diſcharged, the indictment may preſently be amended by the grand jury, and returned according to the name he gives himſelf. 2 *H. H.* 176.

Alſo an indictment naming the defendant by two chriſtian names is not good. L. *Raym.* 562.

If the *county* is in the margin, and the indictment ſets forth the act to be done at ſuch a place *in the county aforeſaid*, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at ſuch a place in the county aforeſaid vitiates the indictment, becauſe two counties are named before, and therefore it is uncertain to which it refers. *Crown Cir.* 115, 116.

By the 1 *H.* 5. *c.* 5. In all indictments on which proceſs of outlawry lieth, to the names of the defendants *additions* ſhall be made of their eſtate, or degree, or miſtery, and of the towns, or hamlets, or places, and counties where they were or be converſant.

But altho' the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead not guilty, without taking advantage of that defect, he ſhall never alledge the *miſnomer* or want of addition to ſtop his trial or judgment; for by ſuch his appearance, and pleading to iſſue, the indictment is affirmed, and the *miſnomer* or want of addition ſalved. 2 *H. H.* 176.

And if ſeveral perſons be indicted for one offence, *miſnomer* or want of addition of one, quaſheth the indictment only

only againſt him, and the reſt ſhall be put to anſwer; for they are in law as ſeveral indictments. 2 *H. H.* 177.

And it is the common practice, where an indictment is inſufficient, while the grand jury is before the court, to amend it by their conſent, in a matter of form as the name or addition of the party, or the like. 2 *Haw.* 245.

Not having God before his eyes, but being moved and ſeduced by the inſtigation of the devil] I do not find it aſſerted by any authority, that theſe words are neceſſary in an indictment.

On the thirtieth day of March *in the firſt year of the reign*, &c.] No indictment can be good, without preciſely ſhewing a certain *day* of the material facts alledged in it. 2 *Haw.* 235.

And if the offence be done in the night, before midnight, the indictment ſhall ſuppoſe it to be done in the day before; and if it happen after midnight, then it muſt ſay, it was done that day after. *Lamb.* 492.

And altho' the day be inſerted, yet if the *year* is not likewiſe inſerted, the indictment is inſufficient. 2 *H. H.* 177.

But where an indictment charges a man with a bare omiſſion, as not ſcouring ſuch a ditch, it is ſaid, that it needs not ſhew any time. 2 *Haw.* 236.

It is moſt regular to ſet forth the year, by ſhewing the year of the king; yet this may be diſpenſed with for ſpecial reaſons, if the very year be otherwiſe ſufficiently expreſſed. 2 *Haw.* 236.

And if it ſay, on ſuch a day laſt paſt, without ſhewing in what year, that is good enough; for the certainty may be found out by the ſtyle of the ſeſſions. *Lamb.* 491.

But tho' the day or year be miſtaken in the indictment, yet if the offence were committed in the ſame county, tho' at another time, the offender ought to be found guilty: but then it may be requiſite, if any eſcheat or forfeiture of land be conceived in the caſe, for the petit jury to find the true time of the offence committed; and therefore it is beſt in the indictment to ſet down the time as truly as can be, tho' it be not of abſolute neceſſity to the defendant's conviction. 2 *H. H.* 179.

And this the rather, becauſe the jury are to find the indictment upon their oaths. *Dalt. c.* 184.

Upon which ground, namely, becauſe the jury are ſworn to preſent the truth, it is beſt to lay all the facts in the indictment as near to the truth as may be; and not to ſay, in an indictment for a ſmall aſſault (for inſtance) wherein the perſon aſſaulted received little or no bodily hurt, that ſuch

a one *with ſwords, ſtaves, and piſtols, beat, bruiſed and wounded him, ſo that his life was greatly deſpaired of*; nor to ſay in an indictment for an highway being obſtructed, that the king's ſubjects cannot go thereon, *without manifeſt danger of their lives*; and the like. Which kind of words, as they are not at all neceſſary, ſo they may ſtagger an honeſt man upon his oath, to find the fact as ſo laid.

At the hour of nine in the afternoon of the ſame day] It is not neceſſary to mention the *hour*, in an indictment. 2 *Haw.* 235.

With force and arms] By the 37 *H.* 8. *c.* 8. it is enacted, that whereas it had been commonly uſed in indictments, to put in the ſame words *vi & armis*, and in divers of the ſame indictments to declare the manner of the force and arms, *viz. baculis, cultelis, arcubus, & ſagittis*, or ſuch like, where in truth the parties had no manner of ſuch weapons at the time of the offence committed; therefore for the future, theſe words, or ſuch like, ſhall not of neceſſity be put in any inquiſition or indictment.

But yet where ſuch words are proper and pertinent, it is ſafe and adviſeable to inſert them, if it be to no other purpoſe than to aggravate the offence. 2 *Haw.* 242.

At Appleby *aforeſaid, in the county aforeſaid*] No indictment can be good, without expreſly ſhewing ſome *place* wherein the offence was committed, which muſt appear to have been within the juriſdiction of the court. 2 *Haw.* 236.

But a miſtake of the place will not be material upon the evidence, on not guilty pleaded, if the fact be proved at ſome other place in the ſame county. 2 *Haw.* 237.

And it is not ſufficient that the county be expreſſed in the margent, but the vill where the offence was committed muſt be alledged to be in the county named in the margent, or, *in the county aforeſaid*, which ſeems to be ſufficient where but one county is named before, but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 *Haw.* 220. 2 *H. H.* 180.

In and upon one George Harriſon] Wherever the perſon injured is known to the jurors, his name ought to be put in the indictment. 2 *Haw.* 232.

But if they know not his name, an indictment for the murder of a perſon unknown, or for ſtealing the goods of a perſon unknown, is good. 2 *H. H.* 181.

Alſo

Alſo there is no need of an addition of the perſon upon whom the offence is committed, unleſs there be a plurality of perſons of the ſame name; neither then is it eſſential to the indictment, tho' ſometimes it may be convenient for diſtinction ſake to add it. 2 *H. H.* 182.

In the peace of God, and of our ſaid lord the king, then and there being] It is uſual to alledge this, but not neceſſary, and poſſibly not true, for he might be breaking the peace at the time. 2 *H. H.* 186.

The aforeſaid George Harriſon *not having any weapon then drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong] An indictment grounded upon an offence made by act of parliament, muſt by expreſs words bring the offence within the ſubſtantial deſcription made in the act of parliament; and thoſe circumſtances mentioned in the ſtatute to make up the offence, ſhall not be ſupplied by the general concluſion *againſt the form of the ſtatute.* 2 H. H. 170.

And ſo it is, if an act of parliament ouſt clergy in certain caſes, as murder *of malice forethought*, robbery *in or near the highway*, though the offences themſelves were at common law, yet becauſe at common law within clergy, they ſhall not be ouſted of clergy, though convicted, unleſs theſe circumſtances, as of *malice forethought*, or *near the highway*, be expreſſed in the indictment. 2 *H. H.* 170.

But there is no neceſſity in an indictment on a publick ſtatute, to recite ſuch ſtatute; for the judges are bound *ex officio* to take notice of all publick ſtatutes. 2 *Haw.* 245.

Yet if the proſecutor take upon him to recite it, and materially vary from a ſubſtantial part of the purview of the ſtatute, and conclude *againſt the form of the ſtatute aforeſaid*, he vitiates the indictment. 2 *Haw.* 246.

Alſo it ſeems to be generally agreed, that a miſrecital of the place or day at which the parliament was holden, vitiates an indictment. 2 *Haw.* 246.

And it hath been adjudged, that a miſrecital of the title of a ſtatute is fatal. 2 *Haw.* 247.

But there is no need to alledge in an indictment, that the defendant is not within the benefit of the proviſoes of the ſtatute; although the ſame may be neceſſary in a *conviction*: for ſince no plea can be admitted to a conviction, and the defendant can have no remedy againſt it, but from an exception to ſome defect appearing in the face of it, and all the proceedings are in a ſummary manner, it is but reaſonable that ſuch a conviction ſhould have the higheſt certainty. 2 *Haw.* 250. 2 *H. H.* 170, 1.

Feloniouſly did make an aſſault] There are ſeveral words of art which the law hath appropriated for the deſcription of the offence, which no circumlocution will ſupply; as *feloniouſly*, in the indictment of any felony; *burglarioufly*, in an indictment of burglary; and the like. 2 *H. H.* 184.

And if a man be indicted that he *ſtole*, and it is not ſaid *feloniouſly*, this indictment imports but a treſpaſs. 2 *H. H.* 172.

With a certain ſword drawn] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poiſoning, or ſtrangling, it doth not maintain the indictment upon evidence. 2 *H. H.* 185.

Of the value of five ſhillings] Regularly it ought to ſet forth the price of the ſword or weapon, or elſe ſay of no value; for the weapon is a deodand forfeited to the king, and the townſhip ſhall be charged for the value, if delivered to them; but this ſeems not to be eſſential to the indictment. 2 *H. H.* 185.

Which he the ſaid John Armſtrong *in his right hand then and there had and held*] It muſt ſhew in what hand he held his ſword. 2 *H. H.* 185.

In and upon the right ſide of the belly near the ſhort ribs of him the ſaid George Harriſon] There muſt be a *certainty* of the offence committed, and nothing material ſhall be taken by intendment or implication; but the ſpecial manner of the whole fact ought to be ſet forth with certainty. 2 *Haw.* 225, 227.

And therefore in the caſe of murder, it ought to ſhew in what part of the body the perſon was wounded: and therefore if it be on his arm, or hand or ſide, without ſaying whether right or left, it is not good. 2 *H. H.* 185.

If theft be alledged in any thing, the indictment muſt ſet forth the value of the thing ſtolen; that it may appear whether it be grand or petit larceny. 2 *H. H.* 183.

In like manner, an indictment that the defendant took and carried away ſuch a perſon's goods and chattels, without ſhewing what in certain, as one horſe, one cow, is not good. 2 *H. H.* 182.

An indictment that the defendant is a common highwayman, a common defamer, a common diſturber of the peace, and the like, is not good; becauſe it is too general, and contains not the particular matter wherein the offence was committed. 2 *H. H.* 182.

In

In like manner an indictment for divers ſcandalous, threatning and contemptuous words, ſpoken of a juſtice of the peace, is not good, but ought to ſet forth the words in ſpecial. *Str.* 699.

An indictment for diſobeying an order of juſtices, muſt find poſitively, that ſuch an order was made, and not by way of recital, *that whereas* —— L. Raym. 1363.

But in an indictment on a conviction, it is not neceſſary to ſet forth the conviction at large, but only ſhortly that ſuch a one was before ſuch and ſuch juſtices convicted, according to the form of the ſtatute, and thereupon a warrant was iſſued, *&c.* L. Raym. 1196.

Then and there felonioufly did ſtab and thruſt] In an indictment it is beſt, and often neceſſary, to repeat the time and place, to the ſeveral parts of the fact. 2 *H. H.* 178.

Thus in an indictment of murder or manſlaughter, as well the day and place of the ſtroke, or other act done, as of the death, muſt be expreſſed; the former, becauſe the eſcheat or forfeiture of lands relates thereto; the latter, becauſe it muſt appear that the death was within the year and day after the ſtroke. 2 *H. H.* 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to be ſhewed; but this is not neceſſary in all caſes, as namely, where a limb is cut off, ſo it may be alſo a dry blow. 2 *H. H.* 186.

But though the manner and place of the hurt and its nature be requiſite, as to the formality of the indictment, and it is fit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is ſufficient to maintain the indictment. 2 *H. H.* 186.

Againſt the peace of our ſaid lord the king] An indictment without concluding againſt the peace, is inſufficient, tho' it be but for uſing a trade not having been an apprentice; for every offence againſt the ſtatute is againſt the peace, and ought ſo to be laid. 2 *H. H.* 188.

Alſo an indictment that concludes againſt the peace, and ſaith not *of our lord the king*, is inſufficient. 2 *H. H.* 188.

Of our ſaid lord the king] An indictment for an offence committed in the time of the *late* king, and concluding againſt the peace of the *preſent* king, is not ſufficient. *Burr. Manſf.* 1901. *K.* and *Lookup.*

His

His crown and dignity] An indictment need not conclude *againſt his crown and dignity*, though it be uſual in many indictments. 2 *H. H.* 188.

And againſt the form of the ſtatute in ſuch caſe made and provided] Regularly, if a ſtatute only make an offence, or alter an offence from one crime to another, as making a bare miſdemeanor to become a felony, the indictment for ſuch new made offence, or new made felony, muſt conclude againſt the form of the ſtatute, or otherwiſe it is inſufficient. 2 *H. H.* 192.

But if a man be indicted for an offence, which was at common law, and concludes againſt the form of the ſtatute, but in truth it is not brought by the indictment within the ſtatute, it ſhall be quaſhed and the party ſhall not be put to anſwer it as an offence at common law. 2 *H. H.* 171.

And if an offence were felony at common law, but a ſpecial act of parliament ouſts the offender of ſome benefit that the common law allowed him, when certain circumſtances are in the fact; though the body of ſuch indictment muſt expreſs thoſe circumſtances, according as they are preſcribed in the ſtatute, yet the indictment need not conclude againſt the form of the ſtatute: Thus on the ſtatute of the 8 *El. c.* 4. in caſe of pick-pockets, the body of the indictment muſt bring them within the expreſs purview of the ſtatute, or otherwiſe they ſhall have the benefit of clergy; but it need not conclude againſt the form of the ſtatute, neither is it uſual in ſuch caſes, for it was felony before, and the ſtatute doth not give a new puniſhment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it ſhould conclude in ſuch caſe againſt the form of the ſtatute, it would not vitiate the indictment, but would be only ſurpluſage. 2 *H. H.* 190.

If an act of parliament, making an offence, be but temporary, and made perpetual by another ſtatute, the indictment concluding againſt the form of the *ſtatute*, is good. 2 *H. H.* 137.

If the former ſtatute be diſcontinued, and revived by another ſtatute, the beſt way is to conclude againſt the form of the *ſtatutes*; tho' there is good opinion, that it is good enough to conclude againſt the form of the firſt ſtatute. 2 *H. H.* 173.

If one ſtatute be relative to another, as where the former makes the offence, and the latter adds a penalty; the indictment ought to conclude againſt the form of the *ſtatutes*. 2 *H. H.* 173.

X. Charges of an indictment.

By the 10 & 11 *W.* *c.* 23. No clerk of aſſize, clerk of the peace, or other perſon, ſhall take any fee of any perſon bound over to give evidence againſt a traitor or felon, for the diſcharge of his recognizance; nor ſhall take more than 2s for drawing any bill of indictment againſt any ſuch felon: On pain of 5l to the party grieved, with full coſts. And if he draw a bill defective, he ſhall draw a new one *gratis*, on the like pain.

For the drawing of indictments for other miſdemeanors, not being treaſon or felony, no fee is limited by any ſtatute: And therefore the ſame dependeth upon the cuſtom and ancient uſage.

XI. Acquittal on an indictment.

By the 14 *G.* 3. *c.* 20. Every perſon charged with any felony or other crime, who ſhall on his trial be acquitted, or againſt whom no indictment ſhall be found by the grand jury, or who ſhall be diſcharged by proclamation for want of proſecution,——ſhall be immediately ſet at large in open court, without payment of any fee to the ſheriff or gaoler: but in lieu thereof, the treaſurer, on a certificate ſigned by one of the judges or juſtices before whom ſuch priſoner ſhall have been diſcharged, ſhall pay out of the general rate of the county or diſtrict ſuch ſum as hath been uſually paid not exceeding 13 s 4 d.

But an action cannot be brought by the perſon acquitted againſt the proſecutor of the indictment, without obtaining a copy of the record of his indictment and acquittal; which, in proſecutions for felony, it is not uſual to grant, if there is any, the leaſt, probable cauſe to found ſuch proſecution upon. For it would be a very great diſcouragement to the public juſtice of the kingdom, if proſecutors, who had a tolerable ground of ſuſpicion, were liable to be ſued at law whenever their indictments miſcarried. —— But an action on the caſe for a malicious proſecution may be founded on ſuch an indictment whereon no acquittal can be, as if it be rejected by the grand jury, or be *coram non judice*, or be inſufficiently drawn; for it is not the danger of the plaintiff, but the ſcandal, vexation, and expence, upon which this action is founded. However, any probable cauſe for preferring it is ſufficient to juſtify the defendant, provided it doth not

appear

appear that the proſecution was malicious. 3 *Black.* 126. *Burr. Manſf.* 1971.

T. 2. *G.* 3. *Morriſon* and *Kelly.* At the ſittings in *Middleſex*, an action came on to be tried, for a malicious proſecution, in indicting the plaintiff for keeping a diſorderly houſe. To prove the fact, the clerk of the peace for the *Weſtminſter* ſeſſions attended, with the original record of the acquittal. It was objected, that there ought to be a copy of the record *granted by the court* before which the acquittal is had, in order to ground an action for a malicious proſecution. But it was ruled by lord *Mansfield*, That tho' this is neceſſary, where the party is indicted for *felony*, yet the practice is otherwiſe in caſe of miſdemeanors. *Black. Rep.* 385.

Condition of a recognizance to prefer a bill of indictment.

THE *condition of this recognizance is ſuch, That if the above bound* A. I. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* —— *in and for the ſaid county, and then and there prefer a bill of indictment againſt* A. O. *late of* ——— *yeoman, for the felonious taking and carrying away of* —— *the property of* —— *and ſhall then and there give evidence concerning the ſame, to the jurors who ſhall inquire thereof on the part of our ſaid lord the king: And in caſe the ſame be found a true bill, Then if the ſaid* A. I. *ſhall perſonally appear before the jurors who ſhall paſs upon the trial of the ſaid* A. O. *and give evidence upon the ſaid indictment, and not depart without leave of the court, Then this recognizance to be void.*

Condition of a recognizance to anſwer to an indictment.

THE *condition of this recognizance is ſuch, That if the above bound* A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, then and there to anſwer to an indictment to be preferred againſt him by* A. I. *of* ——— *yeoman, for aſſaulting and beating him the ſaid* A. I. *and not depart without leave of the court, Then this recognizance to be void.*

Inderſing a warrant in another county. See **Warrant.**

Infants.

Infant, who.

1. BY an infant, or minor, is meant any one who is under the age of 21 years. 1 *Inſt.* 2.

Committing a crime, under 14.

2. It is ſaid generally, that thoſe who are under a natural diſability of diſtinguiſhing between good and evil, as infants under the age of 14 years, which is called the age of diſcretion, are not puniſhable by any criminal proſecution whatſoever. But this muſt be underſtood with ſome allowance; for if it appear by the circumſtances, that an infant under the age of diſcretion, could diſtinguiſh between good and evil, as if one of the age of nine or ten years, kill another and hide the body, or make excuſes, or hide himſelf, he may be convicted and condemned, and forfeit as much as if he were of full age: But in ſuch caſe the judges will in prudence reſpite the execution, in order to get a pardon; and it is ſaid, that if an infant apparently wanting diſcretion, be indicted and found guilty of felony, the juſtices themſelves may diſmiſs him without a pardon. And in general it muſt be left to the diſcretion of the judge, upon the circumſtances of the caſe, how far an infant, under that age, is *capax doli*, or hath knowledge to diſcern betwixt good and evil. *Hale's Pl.* 43. 1 *Haw.* 2. 1 *H. H.* 18.

A remarkable inſtance of this kind we have in the caſe of *William York*. At *Bury* ſummer aſſizes 1748, *William York*, a boy of ten years of age was convicted before lord chief juſtice *Willes*, for the murder of a girl of about five years of age; and received ſentence of death. But the chief juſtice, out of regard to the tender years of the priſoner, reſpited execution, till he ſhould have an opportunity of taking the opinion of the reſt of the judges, whether it was proper to execute him or not, upon the ſpecial circumſtances of the caſe; which he reported to the judges as follows. The boy and girl were pariſh children, but under the care of a pariſhioner, at whoſe houſe they were lodged and maintained. On the day the murder happened, the man of the houſe and his wife went out to their work early in the morning, and left the children in bed together. When they returned from work the girl was miſſing; and the boy being aſked what was become of her, anſwered, that he had helped her up, and put on her clothes, and that ſhe was gone he knew not whither. Upon this, ſtrict ſearch was made in the ditches and pools of water near the houſe, from

an apprehenſion that the child might have fallen into the water. During this ſearch, the man under whoſe care the children were, obſerved that a heap of dung near the houſe had been newly turned up. And upon removing the upper part of the heap he found the body of the child, about a foot's depth under the ſurface, cut and mangled in a moſt barbarous and horrid manner. Upon this diſcovery, the boy, who was the only perſon capable of committing the fact, that was left at home with the child, was charged with the fact, which he ſtiffly denied. When the coroner's jury met, the boy was again charged, but perſiſted ſtill to deny the fact. At length being cloſely interrogated, he fell to crying, and ſaid he would tell the whole truth. He then ſaid, that the child had been uſed to foul herſelf in bed; that ſhe did ſo that morning (which was not true, for the bed was ſearched and found to be clean); that thereupon he took her out of the bed and carried her to the dung heap; and with a large knife, which he found about the houſe, cut her in the manner the body appeared to be mangled, and buried her in the dung heap; placing the dung and ſtraw that was bloody under the body, and covering it up with what was clean; and having ſo done, he got water and waſhed himſelf as clean as he could. The boy was the next morning carried before a neighbouring juſtice, before whom he repeated his confeſſion, with all the circumſtances he had related to the coronor and his jury. The juſtice very prudently deferred proceeding to a commitment, till the boy ſhould have an opportunity of recollecting himſelf. Accordingly he warned him of the danger he was in, if he ſhould be thought guilty of the fact he ſtood charged with, and admoniſhed him not to wrong himſelf; and then ordered him into a room, where none of the crowd that attended ſhould have acceſs to him. When the boy had been ſome hours in this room, where victuals and drink were provided for him, he was brought a ſecond time before the juſtice, and then he repeated his former confeſſion: Upon which he was committed to gaol. On the trial, evidence was given of the declarations before mentioned to have been made before the coroner and his jury, and before the juſtice; and of many declarations to the ſame purpoſe, which the boy made to other people after he came to gaol, and even down to the day of his trial. For he conſtantly told the ſame ſtory in ſubſtance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with ſome other circumſtances tending to corroborate the confeſſion,

he was convicted. Upon this report of the chief juſtice, the judges having taken time to conſider of it, unanimouſly agreed, 1. That the declarations ſtated in the report were evidence proper to be left to the jury. 2. That ſuppoſing the boy to have been guilty of the fact, there are ſo many circumſtances ſtated in the report which are undoubtedly tokens of what lord chief juſtice *Hale* ſomewhere called a *miſchievous diſcretion*, that he is certainly a proper object for capital puniſhment, and ought to ſuffer. For it would be of very dangerous conſequence to have it thought, that children may commit ſuch atrocious crimes with impunity. There are many crimes of the moſt heinous nature, ſuch as in the preſent caſe the murder of young children, poiſoning parents or maſters, burning houſes, and the like, which children are very capable of committing, and which they may in ſome circumſtances be under ſtrong temptations to commit; and therefore, though the taking away the life of a boy of ten years old may ſavour of cruelty, yet as the example of this boy's puniſhment may be a means of deterring other children from the like offences, and as the ſparing this boy merely on account of his age will probably have a quite contrary tendency,——in juſtice to the publick, the law ought to take its courſe, unleſs there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderneſs and caution, adviſed the chief juſtice to ſend another reprieve for the priſoner; ſuggeſting that it might poſſibly appear on further inquiry, that the boy had taken this matter upon himſelf, at the inſtigation of ſome perſon or other, who hoped by this artifice to ſcreen the real offender from juſtice. Accordingly, the chief juſtice did grant one or two more reprieves; and deſired the juſtice who took the boy's examination, and alſo ſome other perſons in whoſe prudence he could confide, to make the ſtricteſt inquiry they could into the affair, and make report to him. At length he receiving no further light, determined to ſend no more reprieve, and to leave the priſoner to the juſtice of the law at the expiration of the laſt. But before the expiration of that reprieve, execution was reſpited till further order, by warrant from one of the ſecretaries of ſtate. And at the ſummer aſſizes 1757, he had the benefit of his majeſty's pardon, upon condition of his entring immediately into the ſea ſervice. *Foſt.* 70.

Under ſeven.

3. But within ſeven years of age, there can be no guilt whatſoever of any capital offence; the infant may be chaſ-

chaſtized by his parents or tutors, but cannot be capitally puniſhed, becauſe he cannot be guilty; and if he be indicted for ſuch an offence as is in its nature capital, he muſt be acquitted. 1 *H. H.* 19, 20.

4. An infant under 14, is preſumed by law, unable to commit a rape, and therefore it ſeems cannot be guilty of it; and though in other felonies *malitia ſupplet ætatem* in ſome caſes, yet it ſeems as to this fact the law preſumes him impotent, as well as wanting diſcretion. 1 *H. H.* 630. Committing a rape.

5. An infant may be guilty of forcible entry, in reſpect of perſonal actual violence. 1 *Haw.* 147. And the juſtices may fine him therefore: But yet it ſhall be good diſcretion in the juſtices of the peace, to forbear the impriſonment of ſuch infant. *Dalt. c.* 126. Forcible entry.

Becauſe it is ſaid, that he ſhall not be ſubject to corporal puniſhment, by force of the general words of any ſtatute, wherein he is not expreſly named. 1 *Haw.* 147.

6. But if one who wants diſcretion, commit a treſpaſs, againſt the perſon or poſſeſſion of another, he ſhall nevertheleſs be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2. 1 *H. H.* 15, 16. Shall be liable to damages for treſpaſs.

7. An infant may bring an appeal, although it take from the defendant the benefit of waging battle; but he muſt proſecute ſuch appeal by a guardian. 2 *Haw.* 161, 162. May bring an appeal.

An appeal likewiſe may be brought againſt him. 2 *Haw.* 168.

8. An infant under the age of diſcretion cannot be an approver; becauſe he cannot take the oath requiſite in that caſe. 2 *Haw.* 205. Cannot be an approver.

9. In caſe of rape commited upon a child of 12 years old, ſuch child may be ſworn as evidence; yea if ſhe be under that age, if it appear to the court that ſhe knows and conſiders the obligation of an oath, ſhe may be ſworn. And in caſe of evidence againſt witches, an infant of nine years old was ſworn. 1 *H. H.* 634. *Dalt.* 378. How far he may be a witneſs.

10. An infant before 21 years of age ſhall not be ſworn in an inqueſt. 7 *W. c.* 32. *ſ.* 4. 1 *Inſt.* 172. Whether he may be a juror.

11. A woman at 9 years of age may have dower; at 12 may conſent to marriage; and at 14 is of age of diſcretion, and may chuſe a guardian. 1 *Inſt.* 78. Woman's age of dower, marriage, and chuſing guardian.

12. A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of diſcretion, may conſent to marriage, and cnuſe his guardian. 1 *Inſt.* 78. Man's age of allegiance, marriage, and chuſing guardian.

Cannot make a deed.

13. At 21, and not before, persons may bind themselves by any deed, and alien lands, goods and chattles. 1 *Inst.* 171.

Nor enter into recognisance.

14. Upon which ground infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their sureties only.

May contract for necessaries.

15. But an infant may bind himself to pay for his necessary meat, drink, apparel, physick, and such like; and also for his good teaching or instruction, whereby he may profit himself afterwards; but if he binds himself in an obligation or other writing, with a penalty for the payment of any of these, that obligation shall not bind him. 1 *Inst.* 172.

And in *Earle*'s case, 1 *Salk.* 387. it is said, that an infant may buy necessaries, but cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him, but at the peril of the lender, who must lay it out for him, or see it laid out.

And it shall be only for necessaries, and not for matters of luxury or extravagance; and if after he comes of age he is prevailed on, by surprize or other undue means, to give security, yet a court of equity on consideration of circumstances will relieve. 2 *Atk.* 35.

May present to a benefice.

16. Also other things of necessity shall bind him, as a presentation to a benefice; for otherwise the lapse shall incur against him. 1 *Inst.* 172.

May convey in a court of equity.

17. And infants seised of estates in trust, or by way of mortgage, may make conveyances thereof, as the courts of chancery or exchequer shall direct. 7 *An. c.* 19. 4 *G.* 3. *c.* 16.

May surrender in a court of equity.

18. And they may surrender leases in the courts of chancery or exchequer, in order to renew the same. 29 *G.* 2. *c.* 31.

May purchase.

19. Also an infant hath, without consent of any other, capacity to purchase, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cause to be alledged, waive, or disagree to the purchase: And so may his heirs after him, if he agree not thereunto after his full age. 1 *Inst.* 2.

May make a will.

20. The common law seems not to have determined precisely, at what age one may make a testament of a personal estate: It is generally allowed, that it may be made at the age of 18, and some say under, for the common law will not prohibit the spiritual court in such cases. 1 *Inst.* 89. 1 *H. H.* 17.

The

The age of diſcretion is 14; and therefore it may ſeem that one may make a teſtament of perſonal eſtate at that age.

21. A perſon is of age to be an executor at 17; and an adminiſtration of any one during the minority of an infant, ceaſeth when the infant comes to that age. 5 *Co. Pigot's* caſe. 1 *H. H.* 17. May be an executor.

22. Any perſon having child or children, under 21 years of age, and not married, may by deed or will atteſted by two witneſſes, diſpoſe of the cuſtody and tuition of ſuch child or children, until they ſhall be of the age of 21, or for a leſſer time; and this, whether ſuch parent be within or above the age of 21. 12 *C.* 2. *c.* 24. *ſ.* 8. May bequeath the tuition of his children.

23. An infant cannot anſwer but by guardian; but he may ſue either by his next friend or by guardian. 3 *Salk.* 196. May ſue by prochein amy.

24. If an infant of the age of 17 years releaſe a debt, this is void; but if an infant make the debtor his executor, this is a good releaſe in law of the action. 1 *Inſt.* 264. In what caſe he may releaſe a debt.

25. By the 5 *El. c.* 4. Perſons above the age of 10 years by their own conſent and agreement, may be bound apprentices. At what age he may be bound apprentice.

And by the 5 *El. c.* 5. Any perſon, above ſeven years old, may be bound apprentice to the ſea-ſervice.

By the 43 *El. c.* 2. No age is limited for the binding of pariſh apprentices; ſo that it ſeemeth they may be bound at the age of ſeven, when they ceaſe to be nurſe children, and conſequently may be taken from the mother.

26. It ſhall be felony without benefit of clergy, to ſteal goods to the value of 40s out of an houſe, though the houſe be not broken open; but this ſhall not extend to apprentices under 15 years of age. 12 *An. ſt.* 1. *c.* 7. Infant apprentice embeziling goods.

27. Servants above the age of 18, imbeziling their maſters goods to the value of 40s, ſhall be puniſhed as felons. 21 *H.* 8. *c.* 7. Infant ſervant imbeziling goods.

Information.

1. LORD *Hale* ſays, Tho' informations are practiſed oftentimes in the crown office in caſes criminal, and by many penal ſtatutes the proſecution upon them is by the Information in general.

acts themſelves limited to be by *bill, plaint, information, or indictment*; yet thus much is obſervable, that the method of proſecution of *capital* offences is ſtill to be by indictment; and in all *criminal cauſes not capital*, the moſt regular and ſafe way and moſt conſonant to the ſtatute of *magna charta* and other ſtatutes is by preſentment or indictment of twelve ſworn men. 2 *H. H.* 151.

Mr. *Hawkins* diſtinguiſhes informations into two kinds; ſuch as are merely at the ſuit of the king, and ſuch as are partly the ſuit of the king and partly the ſuit of the party; and ſays, It hath been holden, that the king ſhall put no one to anſwer for a wrong done principally to another without an indictment or preſentment of a jury, but I do not find this diſtinction confirmed by experience; for it is every day's practice, agreeable to numberleſs precedents, to proceed by way of information, either in the name of the attorney general, or of the maſter of the crown office, for offences done principally to private perſons, as for batteries, cheats, reſcuing perſons from legal arreſts, perjuries and ſubornations thereof, forgeries, conſpiracies, and the like; as well as for offences done principally to the king, as for libels, ſeditious words, riots, extortions, diſobeying the king's writs, abuſing the king's commiſſion to the oppreſſion of the ſubject, and in general any other offences againſt the publick good, or againſt the firſt and obvious principles of juſtice and common honeſty. 2 *Haw.* 260.

Information qui tam.

2. Informations partly at the ſuit of the king and partly at the ſuit of the party are commonly called informations *qui tam*, from thoſe words in the information when the proceedings were in *Latin*, *qui tam pro domino rege quam pro ſeipſo, &c.* 2 Haw. 259.

Action upon a ſtatute.

3. Of near affinity to an information *qui tam*, is an action upon the ſtatute: which is either a *private* action, which is, when an action is given upon a ſtatute to the king, and to the *party grieved* only; or, a *popular* action, which is, where the action is given to the *people* in general, that is, to any one that will ſue for the king, and for himſelf.

But if the king commenceth his ſuit before the informer, the king ſhall have the whole forfeiture (becauſe in ſuch caſe he alſo is the informer); and he may, before the informer begins his ſuit, releaſe the penalty to the offender, and bar all others; but if after a popular action is brought by the informer, the king's attorney will enter *ulterius non vult proſequi*, the informer may proſecute for his part. *Wood. b.* 4. *c.* 4.

And

And in general, it ſeems that of common right an information *at the ſuit of the king*, or an action in the nature thereof, may be brought for offences againſt ſtatutes, whether they be mentioned by ſuch ſtatutes or not, unleſs other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 *Haw.* 260.

But an information or action *qui tam* will not lie on any ſtatute, which prohibits a thing as being an immediate offence againſt the publick good in general, under a certain penalty, unleſs the whole or part of ſuch penalty be expreſly given to him who ſhall ſue for it; becauſe otherwiſe it goes to the king, and nothing can be demanded by the party: But where ſuch ſtatute gives any part of ſuch penalty to him who will ſue for it by action or information, any one may bring ſuch action or information, and lay his demand, *as well for our lord the king, as for himſelf.* 2 Haw. 256.

Alſo where a ſtatute prohibits or commands a thing, the doing or omiſſion whereof is an immediate danger to the party, and alſo highly concerns the peace, ſafety, or good government of the publick, or the honour of the king, or of his ſupreme courts of juſtice, it ſeems to be the general opinion, that the party grieved may bring his action *qui tam* on ſuch ſtatute. 2 *Haw.* 265.

In what time a qui tam action ſhall be brought.

4. By the 31 El. c. 5. *All actions, ſuits, bills, indictments, or informations on any penal ſtatute, whereby the forfeiture is limited to the king, ſhall be brought within two years after the offence committed; if limited to the king, and to any other who ſhall proſecute, then within one year; and in default of ſuch proſecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by ſtatute to be brought within ſhorter time, then they ſhall be brought within ſuch time limited.* ſ. 5, 6.

On any penal ſtatute] But if an offence prohibited by a penal ſtatute, be alſo an offence at common law; the proſecution of it, as of an offence at common law, is no way reſtrained hereby. 2 *Haw.* 272.

To any other who ſhall proſecute] That is, to a common informer; and therefore the party grieved is not within the reſtraint of this ſtatute, but may ſue in the ſame manner as before. 2 *Haw.* 272.

Two informations on the ſame day.

5. If two informations be exhibited on the ſame day, for the ſame offence, they mutually abate one another. 2 *Haw.* 275.

In what county it ſhall be laid.

6. By the 21 J. c. 4. *All offences againſt any penal ſtatute, for which any common informer may ground a pe-*

puta-

pular action, bill, plaint, ſuit, or information, before the judges of aſſize, or juſtices of the peace in their general or quarter ſeſſions (having power to hear and determine the ſame), ſhall be proſecuted in the county where they were committed, and not elſewhere: and if the offence is not proved to have been committed in the ſame county, the defendant ſhall be found not guilty. ſ. 1, 2.

Provided that informations, ſuits, or actions, againſt popiſh recuſants, or perſons charged with maintenance, champerty, or buying of titles, may be laid in any county. ſ. 5.

Againſt any penal ſtatute] *H.* 8 *W. K.* and *Gaul. Holt* Ch. J. ſaid, ten judges had agreed that this ſtatute doth not extend to any offence created ſince; ſo that proſecutions on ſubſequent penal ſtatutes are not reſtrained thereby; but this ſtatute is as to them, as it were repealed *pro tanto.* 1 Salk. 372.

For which any common informer may ground a popular action] Therefore this extends not to any ſuit by a party grieved, or by the attorney general; but only to thoſe brought by common informers. 2 *Haw.* 269, 270.

General or quarter ſeſſions, having power to hear and determine the ſame] Yet this gives no juriſdiction to juſtices of the peace, which they had not before; but only appoints, that where informations might have been brought in the courts at *Weſtminſter* or before juſtices of the peace, ſuch informations ſhall be now brought before juſtices of the peace only. *Cro. Car.* 112.

In the county where they were committed] *H.* 7 *G. Smith* and *Potter.* In the king's bench. In a *qui tam* on the 5 *Eliz.* for exerciſing a trade, without an apprenticeſhip, it was moved to ſtay the proceedings, becauſe the nominal plaintiff had releaſed, and the fact was laid at *Cambridge*, whereas the juriſdiction of the king's bench is at laſt ſettled to be reſtrained by the 21 *J. c.* 4. to actions ariſing in the county where the king's bench ſits, ſo that if they were to go on to trial, the plaintiff could have no effect of his ſuit. And of this opinion was the court, and they made a rule that proceedings ſhould be ſtayed. *Str.* 415.

And not elſewhere] But where a ſubſequent ſtatute gives a remedy for the recovery of a penalty in any court of record generally, it ſo far impliedly repeals this reſtraint, and conſequently leaves the informer at his liberty to ſue in the courts at Weſtminſter. 2 *Haw.* 270.

Alſo,

Alſo, where a ſtatute limits ſuits by an informer *qui tam*, to other courts than thoſe of *Weſtminſter hall*; yet any one may, by conſtruction of law, exhibit an information in the exchequer, for the whole penalty, for the uſe of the king. 2 *Haw.* 268.

7. If juriſdiction be given to the ſeſſions to hear and determine, and it is not ſaid by information; this ſhall be by indictment, and not information. *Cro. Car.* 112. Seſſions hath not power without expreſs words.

8. By the 18 El. c. 5. *Upon every information which ſhall be exhibited by a* (common) *informer, except for maintenance, champerty, buying of titles, or embracery; a note ſhall be made of the day, month, and year of the exhibiting thereof; and it ſhall be taken to be of record from that time forward and not before: and no proceſs ſhall be iſſued on ſuch information, till it be exhibited in form aforeſaid.* ſ. 1. Time of exhibiting the information to be entred.

9. And by the 21 J. c. 4. *No officer ſhall enter any information, bill or plaint, count or declaration, till the informer hath made oath before ſome of the judges of the court, that the offence was not committed in any other county, and that he believeth in his conſcience, that the offence was committed within a year before the information or ſuit; the oath to be there entred of record.* ſ. 3. Oath to be made on exhibiting the information.

10. And in the court of king's bench, *the clerk of the crown ſhall not (except by order of court) exhibit or receive any information in the name of the maſter of the crown office, for treſpaſſes, batteries, or other miſdemeanors, or iſſue any proceſs thereupon, before he ſhall have taken, or ſhall have delivered to him a recognizance from the proſecutor, with his place of abode, title, or profeſſion to be entred,—to the perſon againſt whom the information is exhibited, in the penalty of 20 l, that he will effectually proſecute ſuch information, and abide by and obſerve ſuch orders as the ſaid court ſhall direct; which recognizance the ſaid clerk of the crown, and alſo every juſtice of the peace where the cauſe of ſuch information ſhall ariſe, are impowered to take; after the taking or receipt whereof, he ſhall make an entry thereof upon record, and ſhall file a memorandum thereof in ſome publick place in his office, to which all perſons may reſort without fee.* 21 J. c. 4. ſ. 2, 6. Recognizance to be given.

In the name of the maſter of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 *Haw.* 262.

11. And the general practice of the court of king's bench is, not to order an information to be filed, without Rule to ſhew cauſe.

firſt

first making a rule upon the defendant to ſhew cauſe to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of ſome offence of an enormous kind, or dangerous tendency. The defendant muſt be perſonally ſerved with the rule, and if he do not at the day given for that purpoſe ſatisfy the court by affidavits, that the ſubſtance of the charge is falſe or frivolous, or other reaſonable cauſe againſt the proſecution, the court uſually grants the information. 2 *Haw.* 262.

Proceſs on an information.

12. By the 21 J. c. 4. *The like proceſs ſhall be awarded, upon an information by a common informer, as in an action of treſpaſs* vi & armis *at the common law.* ſ. 1.

And conſequently, the proceſs in all ſuch ſuits muſt be by attachment, or *pone per vadios*, and after by diſtreſs infinite, where by the return the party appears to be ſufficient, otherwiſe by *capias*. 2 Haw. 284.

Proceſs to be indorſed.

13. And *on every proceſs upon an information by a common informer, ſhall be indorſed as well the party's name that purſueth the proceſs, as alſo the ſtatute upon which the information is grounded.* 18 El. c. 5. ſ. 1.

Proceſs on a criminal information.

14. But on a *criminal* information, it is the uſual practice of the crown office, firſt, to award a *ſubpœna*; and after the return thereof, if no appearance be entred in four days, and an affidavit be made of the ſervice of the *ſubpœna*, to make out a *capias* of courſe, where the defendants are informed againſt in their private capacity, and a *diſtringas*, where they are ſued as a corporation aggregate. 2 *Haw.* 284.

General iſſue.

15. *If any information, ſuit, or action, ſhall be brought againſt any perſon on a penal ſtatute, the defendant may plead the general iſſue, and give the ſpecial matter in evidence.* 16 J. c. 4. ſ. 4.

Information not quaſhed upon motion.

16. The court will not generally quaſh an information upon motion, but the party muſt either plead, demur, or move in arreſt of judgment. 1 *Salk.* 372. *Str.* 185, 953.

Certainty required in an information.

17. But ſeeing that an information differs from an indictment in little more than this, that the one is found by the oath of 12 men, and the other is not ſo found but is only the allegation of the officer or perſon who exhibits it; whatſoever certainty is required in an indictment, the ſame at leaſt is neceſſary alſo in an information; and conſequently as all the material parts of the crime muſt be preciſely found in the one, ſo muſt they be preciſely alledged in the other, and not by way of argument or recital. 2 *Haw.* 260, 1.

18. And

18. And therefore the ſtatutes of jeofails (from *J'ay faille*, I have failed), or the ſtatutes that do remedy overſights in pleading, extend not to informations. *Wood. b.* 4. *c.* 4. Not aided by the ſtatutes of jeofails.

19. If an information contain ſeveral offences againſt a ſtatute, and be well laid as to ſome of them, but defective as to the reſt, the informer may have judgment for ſo much as is well laid. 2 *Haw.* 266. Information good as to part.

20. Generally, *if a* (common) *informer ſhall willingly delay his ſuit, or diſcontinue, or be nonſuit, or ſhall have a verdict or judgment againſt him, he ſhall pay coſts to the defendant.* 18 El. c. 5. ſ. 3. Coſts againſt the plaintiff.

And in the court of king's bench, particularly, *if the defendant ſhall appear and plead to iſſue, and the proſecutor ſhall not at his own coſts, within a year after iſſue joined, procure the ſame to be tried, or if a verdict paſſes for the defendant, or the informer procure a* noli proſequi *to be entred, the ſaid court of king's bench may award the defendant his coſts, unleſs the judge ſhall certify that there was a reaſonable cauſe for exhibiting ſuch information. And if the informer ſhall not, in three months after ſuch coſts taxed, and demand made, pay the ſame, the defendant ſhall have the benefit of the recognizance abovementioned, to compel him thereunto.* 4 & 5 W. c. 18. ſ. 2.

Unleſs the judge ſhall certify] *E.* 13 *G.* 2. *K.* and *Woodfall.* Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for coſts on this ſtatute, which provides, that in caſes where the defendant is acquitted, the court is authorized to award coſts to the defendant, unleſs the judge ſhall at the trial certify there was a reaſonable cauſe. In this caſe, no ſuch certificate was aſked; but it was inſiſted on for the proſecutor, that it was diſcretionary in the court. The chief juſtice certified *ore tenus*, that it was a verdict againſt evidence; but then he and all the others held, that it was now too late to inquire into the probable cauſe; and that it was not diſcretionary, but compulſory upon them, where there was no certificate. So the defendant had his coſts. *Str.* 1131.

21. But it ſeems to be in a great meaſure ſettled, that, an *informer* upon a popular ſtatute ſhall in no caſe whatſoever have his coſts, unleſs they be expreſly given him by ſuch ſtatute; for it is certain, that he cannot recover them by the common law, for that doth not give coſts in any caſe: neither can he recover them by the ſtatute of *Glouceſter*, which gives the demandant his coſts in all Coſts againſt the defendant.

caſes

caſes wherein he ſhall recover his damages; for this ſeems to ſuppoſe ſome damage to have been done to the demandant in particular, which cannot be ſaid in any popular action. But it ſeems agreed, that an action on a ſtatute *by the party grieved*, for a certain penalty given by ſuch ſtatute, is within the ſtatute of *Glouceſter*, becauſe ſuch penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of coſts, it would be in moſt caſes in vain for him to ſue for it, ſince the coſts of ſuit would exceed it. But it is ſaid, that no coſts ſhall be recovered in an action on a ſtatute, which gives no *certain* penalty to the party grieved, but only his *damages* in general, if ſuch a ſtatute be introductive of a new law, and give a remedy in a point not remediable at the common law: but there is not that inconvenience in this caſe, as in the former; becauſe no certain ſum being ſpecified, the jury may give the plaintiff a full ſatisfaction by way of damages. 2 *Haw.* 274.

Informer compounding.

22. *No* (common) *informer ſhall compound or agree with the defendant, but after anſwer made in court, nor after anſwer, but by the order or conſent of the court; on pain of being ſet on the pillory, in ſome market town next adjoining, in open market, for two hours, and of being diſabled to be informer on any penal ſtatute, and alſo of forfeiting* 10 *l, half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the juſtices of aſſize, and juſtices of the peace in ſeſſions, may hear and determine all offences againſt this act.* 18 El. c. 5. ſ. 4.

Colluſive action.

23. *And if the defendant plead a recovery by a former action, which former action ſhall be found to have been colluſive; the plaintiff ſhall recover, as though no ſuch action before had been had: and if the defendant ſhall be convicted of ſuch colluſion, he ſhall be impriſoned two years, by proceſs of* capias *and outlawry, and that as well at the king's ſuit, as of every other that will ſue.* 4 H. 7. c. 20.

And no releaſe of any common perſon, to any ſuch party, whether before or after any action popular, or indictment of the ſame commenced or made, hanging the ſame action, ſhall be available to ſurceaſe the ſaid action, indictment, proceſs, or execution. id.

Form

Form of an information *qui tam.*

Weſtmorland. BE *it remembred, that* A. I. *of* ——— *in the county of* ——— *gentleman, who as well for our lord the now king as for himſelf doth proſecute, cometh before the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at their general quarter ſeſſions of the peace holden at* —— *in and for the ſaid county, the* —— *day of* —— *in the* —— *year of the reign of* —— *in his proper perſon; and as well for the ſame lord the king, as for himſelf, giveth the court here to underſtand and be informed, That* A. O. *late of* ——— *in the county aforeſaid yeoman, on the* —— *day of* —— *in the year aforeſaid, at* —— *aforeſaid, in the county aforeſaid, not regarding the laws and ſtatutes of our ſaid lord the king, but intending to* ——— *with force and arms* [Here inſert the offence with the ſame preciſion as in an indictment] *againſt the form of the ſtatute in that caſe made and provided: Whereupon the aforeſaid* A. I. *as well for the ſaid lord the king, as for himſelf, prayeth the advice of this court in the premiſſes; and that the aforeſaid* A. O. *may forfeit the ſum of* —— *according to the form of the ſtatute aforeſaid; and that he the ſame* A. I. *may have one moiety thereof, according to the form of the ſtatute aforeſaid; and alſo that the aforeſaid* A. O. *may come here into this court, to anſwer concerning the premiſſes; and there are pledges of proſecuting,* John Doe *and* Richard Roe. *And hereupon it is commanded to the ſaid* A. O. *that all other things omitted, and all excuſes laid aſide, he be in his proper perſon at the next general quarter ſeſſions of the peace to be holden for the ſaid county, to anſwer as well to our ſaid lord the king, as to the ſaid* A. I. *who as well for the ſaid lord the king, as for himſelf, doth proſecute, of and concerning the premiſſes, and further to do and receive what the ſaid court ſhall conſider in this behalf.*

Ingroſſing. See **Foreſtalling.**
Inns, Innkeepers. See **Alehouſes.**
Inſolvent Debtors. See **Debtors.**

Inrolment.

NO manors, lands, tenements, or hereditaments ſhall paſs from one to another, whereby any eſtate of inheritance or freehold ſhall be made or take effect in any perſon, or any uſe thereof to be made by reaſon only of any bargain and ſale thereof, except the ſame bargain and ſale be made by writing indented, ſealed, and inrolled in one of the king's courts of record at *Weſtminſter*; or elſe within the county where the lands lie, before the *cuſtos rotulorum*, and two juſtices, and the clerk of the peace, or two of them at the leaſt, whereof the clerk of the peace to be one: the ſame inrolment to be made in ſix months after date of the writings: Paying, where the land exceeds not 40s a year, 2s; to wit, 12d to the juſtices, and 12d to the clerk; and where it exceeds 40s a year, then paying 5s, half to the juſtices, and half to the clerk: and the clerk of the peace ſhall inroll and ingroſs the ſame in parchment: The ſame to be kept amongſt the records of the county. 27 *H.* 8. *c.* 16.

In the counties of *Lancaſter*, *Cheſter*, and *Durham*, they may be inrolled in the reſpective courts there, or at the aſſizes. 5 *El. c.* 26.

The inrolling of deeds and wills of papiſts, belongs to title Popery.

Judgment.

Judgments certain.

OF judgments, ſome are fixed and ſtated; as in caſes of treaſon, felony, præmunire, and miſpriſion; the particular forms of which may be ſeen under their reſpective titles.

Judgments variable.

2. Others are diſcretionary and variable, according to the different circumſtances of each caſe: Thus for crimes of an infamous nature, ſuch as petit larceny, perjury, or forgery at common law, groſs cheats, conſpiracy not requiring a villainous judgment, keeping a bawdy-houſe, bribing witneſſes to ſtifle their evidence, and other offences of the like nature; it ſeems to be in a great meaſure left to the prudence of the court to inflict ſuch corporal puniſhment, and alſo ſuch fine, and binding to the good behaviour for a certain time, as ſhall ſeem

ſeem moſt proper and adequate to the offence. 1 *Haw.* 445.

3. The court may aſſeſs a fine, but cannot award any corporal puniſhment againſt a defendant, unleſs he be actually preſent in court. 2 *Haw.* 446. Judgment in the offender's abſence.

4. Where there are ſeveral defendants, a joint award of one fine againſt them all, is erroneous; for it ought to be ſeveral againſt each defendant; for otherwiſe, one who hath paid his proportionable part, might be continued in priſon till all the others have alſo paid theirs, which would be in effect to puniſh him for the offence of another. 2 *Haw.* 446. Judgment of a joint fine.

5. A fine is under the power of the court, during the term in which it is ſet; and may be mitigated as ſhall be thought proper: but after the term, it admits of no alteration. 2 *Haw.* 446. Judgment in mitigation of fines.

6. A judgment contrary to the verdict is void. *Read.* Judgm. Judgment againſt the verdict.

7. By many ſtatutes peculiar puniſhments are appointed for ſeveral offences, as pillory, ſtocks, impriſonment, and the like; and in all theſe caſes, no room is left for the juſtices diſcretion, for they ought to give judgment, and to inflict the puniſhment in all the circumſtances thereof, as ſuch ſtatutes do direct. *Dalt. c.* 188. Judgment by particular ſtatutes.

Juror.

NOTE; The ſtatutes of the 4 & 5 *W. c.* 24. and 7 & 8 *W. c.* 32. hereafter following, were at firſt but temporary; but are referred to, and as it were adopted by the 3 *G.* 2. *c.* 25. Which act of the 3 *G.* 2. *c.* 25. is made perpetual by the 6 *G.* 2. *c.* 37. And all the ſaid three acts of 4 & 5 *W.* 7 & 8 *W.* and 3 *G.* 2. are required to be read at every *Midſummer* ſeſſions.

Trial by juries is the *Engliſhman*'s birth right, and is that happy way of trial, which notwithſtanding all revolutions of times, hath been continued beyond all memory to this preſent day; the beginning whereof no hiſtory ſpecifies, it being contemporary with the foundation of this ſtate, and one of the pillars of it, both as to age and conſequence. *Tr. p. pais.* 3. *Dalt. c.* 186.

Concerning which I will treat in the order following:

I. Who may or may not be jurors.

II. Of making and returning lists of jurors.

III. Of the sheriff's summoning and returning jurors.

IV. Of the challenge of jurors.

V. Of the demeanor of jurors in giving their verdict.

VI. Of the indemnity and punishment of jurors.

I. Who may or may not be jurors.

Grand jurymen.

1. Mr. *Hawkins* says, it doth not seem to be any where holden, that none but freeholders ought to be returned on a grand jury. 2 *Haw.* 216, 217.

But in another place he says, that by the common law, every grand juryman ought to be a freeman. 1 *Haw.* 215.

And L. *Hale* says, touching the yearly value of the estate of a grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 *H. H.* 155.

But in *Yorkshire*, they are to have 80l a year, freehold or copyhold. 7 & 8 *W.* c. 32. *s.* 8.

Also a grand juryman must be a lawful liege subject; and consequently, neither under attainder of any treason or felony, nor an alien, nor outlawed, whether for a criminal matter, or as some say, in a personal action; and from hence it seems, that any one who is under a prosecution for any crime, may by the common law, before he is indicted, challenge any of the persons returned on the grand jury, for the defect of any of the qualifications aboveſaid. 1 *Haw.* 215.

The grand jury ought not to consist of an indefinite number; for no more ought to be sworn than twenty-three. For if a number amounting to two full juries or more, should be sworn, it might happen that a complete jury of twelve might find a bill to be true, though other twelve or more of the same jury might reject it as untrue; which would be inconvenient and absurd. *Burrow, Mansfield.* 1088.

2. In

2. In the courts at *Weſtminſter*, and city of *London*, the jurors ſhould be houſholders within the city, and have lands, tenements, or perſonal eſtates, to the value of 100l. 3 *G.* 2. *c.* 25. *ſ.* 19, 20. Jurymen in the courts at Weſtminſter.

And by the 4 *G.* 2. *c.* 7. *ſ.* 3. Leaſeholders in the county of *Middleſex*, where the improved rents or value ſhall amount to 50l. a year, over and above the ground rent or other reſervations, ſhall be liable to ſerve on juries.

3. At the aſſizes or ſeſſions in the country, every juror, other than ſtrangers *per medietatem linguæ* in *England*, ſhall have in his own name, or in truſt for him, within the county, 10l a year, and in *Wales* 6l a year, above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demeſne, or in rents, or in all or any of them, in fee ſimple, fee tail, or for the life of themſelves, or ſome other perſon: and if any of a leſſer eſtate be returned, he may be diſcharged upon challenge, or on his own oath. 4 & 5 *W.* *c.* 24. *ſ.* 15. 3 *G.* 2. *c.* 25. *ſ.* 20. At the aſſizes or ſeſſions.

And by the 3 *G.* 2. *c.* 25. *ſ.* 18. Perſons having an eſtate in poſſeſſion in land in their own right, of 20l a year above the reſerved rent, being held by leaſe for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, ſhall be liable to ſerve on juries.

From hence it appears, that lands *freehold*, *copyhold*, *ancient demeſne*, or *leaſehold*, do render perſons liable to ſerve on juries. And ſome have thought that all lands are included under theſe denominations. And in *Coke*'s *copyholder*, *p.* 14. it is ſaid, that what land ſoever is not copyhold, is freehold. And in *Calthr.* 41. it is ſaid, that copyhold lands may differ in name, but not in nature; for although copyhold lands be ſpecially ſo called, becauſe holden by copy of court roll, and cuſtomary lands by ſome ſpecial cuſtom; yet they are all holden in one general kind, that is, by cuſtom, and the diverſity of their names doth not alter the nature of their tenure. Nevertheleſs, although all copyhold lands are cuſtomary, yet all cuſtomary lands are not copyhold, and conſequently, as ſuch, do not qualify a man to ſerve on juries. Of which kind of cuſtomary lands not being copyhold, the greater part of the county of *Weſtmorland* in particular doth conſiſt. For which cauſe (and by reaſon of the number of perſons diſqualified by being quakers) the jurors in that county are in compariſon but few. To remedy which inconvenience, it ſeemeth not unreaſonable,

ſonable, that in the ſtatutes limiting the qualification of jurors, amongſt other denominations of tenure, the word *cuſtomary* ſhould be inſerted; for why ſhould a copyholder of 10l a year be obliged to ſerve, and a cuſtomary tenant of 100l a year be exempted?

Jurors on trials of foreigners.

4. As to the ſtrangers *per medietatem linguæ* abovementioned, it is enacted by the 28 *Ed.* 3. *c.* 13. that in inqueſts to be taken amongſt aliens and denizens, before any judges, one half of the inqueſt ſhall be denizens, and the other half aliens, if ſo many there be in the place who are not parties; if not, then ſo many as there are.

And by the 27 *Ed.* 3. *ſt.* 2. *c.* 8. Before the mayor of the ſtaple, if both parties be ſtrangers, the inqueſt ſhall be taken by ſtrangers; if both be denizens, by denizens; if the one party be denizen, and the other alien, half of the jury ſhall be denizens, and half aliens.

And theſe aliens need not have any qualification by their eſtate. 8 *H.* 6. *c.* 29.

But it ſeems that the *Engliſh* half of the jury ought to have eſtates of the ſame value as in other caſes. 2 *Haw.* 419.

But by the 13 & 14 *C.* 2. *c.* 11. *ſ.* 11. In actions concerning tonnage and poundage, or ſhips or goods to be forfeited by reaſon of unlawful importation or exportation, there ſhall not be any party jury, but ſuch only as are natural born ſubjects.

Jurors in towns corporate.

5. In towns corporate: Trials of felons ſhall be by men worth 40l in goods, though they have no freehold. 23 *H.* 8. *c.* 13.

And in 3 *Salk.* 81. it is ſaid, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the ſtatutes which require jurors to be of ſuch and ſuch ſufficiency, do generally except cities, boroughs, and towns corporate.

In the torn.

6. In the torn: Jurors ſhall have 20s a year freehold; or 26s 8d copyhold. 1 *R.* 3. *c.* 4.

In the leet.

7. In the leet: It is ſaid by ſome books, that any perſon happening to be preſent at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the ſteward to be ſworn, whether he be reſident within the precincts of the leet, or not: by which it ſeems to be implied, that any perſon whatſoever is capable of being put upon the jury in a court leet. 2 *Haw.* 69.

8. The

On the coroner's inquest.

8. The coroner's jury, upon inquests taken before him, are to be of the neigbouring towns; but no qualification by estate is required by any statute. 2 *H. H.* 152.

On other jurors concealing presentments.

9. Jurors to inquire of the concealments of other inquests, shall have lands of 40s a year. 3 *H.* 7. *c.* 1.

On inquiries of forcible entry.

10. Jurors to inquire of forcible entry or detainer, shall have lands or tenements of 40s a year. 8 *H.* 6. *c.* 9.

On inquiries of riots.

11. Jurors to inquire of riots, shall have 20s a year, charter land, or freehold; or 26s 8d copyhold. 19 *H.* 7. *c.* 13.

In Yorkshire.

12. In *Yorkshire:* No person having 150l a year, of such estate as will qualify him to serve on juries, shall be summoned to the sessions; but only persons less able to bear the expence of attending the assizes. 1 *An. st.* 2. *c.* 13. *s.* 3. And if he doth serve at the sessions it shall not satisfy his turn, but he shall attend the assize nevertheless. 10 *Ann. c.* 14. *s.* 6.

Persons under age.

13. Young men under 21 years of age, shall not serve upon juries. 7 & 8 *W. c.* 32. *s.* 4.

Persons above age, infirm, absent.

14. Old men above 70, persons continually sick, or being diseased at the time of the summons, or not dwelling in the county, shall not be put in juries of petit assizes; on pain of the sheriff paying damages to the party grieved, and being amerced to the king. 13 *Ed.* 1. *st.* 1. *c.* 38.

And the equity of this statute, and also the reason of the thing, seem plainly so far to extend to grand juries, that if it shall appear, that any of the persons abovementioned be returned on a grand jury, the court will easily excuse their non appearance. But it seems clear, that any such persons being returned on a grand jury, may lawfully serve upon it if they think fit. 2 *Haw.* 216.

In what case women shall be jurors.

15. The jury ought to be men; yet there shall be a jury of women, to try if a woman be ensient, upon the writ *de ventre inspiciendo.* Tr. p. pais. 86.

Surgeons.

16. By the 5 *H.* 8. *c.* 6. and 18 *G.* 2. *c.* 15. Freemen of the company of surgeons in *London*, are exempted from serving upon juries.

Apothecaries.

17. And by the 6 & 7 *W. c.* 4. Apothecaries, within *London* and seven miles thereof, being free of the company; and country apothecaries, who have served seven years apprenticeship, —— shall be exempted from serving on juries, and their return shall be void, unless they shall voluntarily consent to serve. 6 & 7 *W. c.* 4.

Clergymen.

18. Clergymen cannot be impanelled upon juries. *Lamb.* 396.

Diſſenting teachers.

19. Diſſenting teachers, qualified under the toleration act, are exempted from ſerving on juries. 1 *W.* *c.* 18. *ſ.* 11. 19 *G.* 3. *c.* 44.

Quakers.

20. Alſo quakers. 7 & 8 *W.* *c* 34. *ſ.* 6.

Writs of exemption.

21. By the 4 & 5 *W.* *c.* 24. *ſ.* 21. No writ *de non ponendis in aſſiſis & juratis*, ſhall be granted, unleſs upon oath made, that the ſuggeſtions upon which it is granted, are true.

And the jurors ought to come in perſon and claim their privilege; for the ſheriff cannot return it. *Tr. p. pais.* 87.

II. Of making and returning liſts of jurors.

Precepts to the high and petty conſtables.

1. The juſtices at *Midſummer* ſeſſions, ſhall iſſue forth their warrants (A) under the hands and ſeals of two or more of them, to the high conſtables, requiring them to iſſue forth their precept to the petty conſtables, thereby directing and requiring them to make and return true liſts in writing, of the names and places of abode, of all perſons within their reſpective conſtablewicks, qualified to ſerve on juries, with their titles and additions, between the ages of 21 and 70. High conſtable failing to iſſue his precept, ſhall forfeit 10 l, on conviction at the aſſizes or ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 4. 8 & 9 *W.* *c.* 10. 3 & 4 *An.* *c.* 18. *ſ.* 5.

Petty conſtables may inſpect the rates.

2. The petty conſtables, on requeſt to any pariſh officer who ſhall have in his cuſtody any of the rates for the poor or land tax, ſhall have free liberty to inſpect ſuch rates, and take from thence the names of freeholders, copyholders, or other perſons qualified to ſerve on juries, dwelling within their reſpective precincts. 3 *G.* 2. *c.* 25. *ſ.* 1.

Liſts to be put upon the church door.

3. And ſhall yearly, 20 days at leaſt before *Michaelmas*, upon two or more *ſundays*, fix on the door of the church, chapel, and every other publick place of religious worſhip, an exact liſt of perſons intended to be returned; and ſhall leave at the ſame time a duplicate thereof, with a churchwarden or overſeer, to be peruſed by the pariſhioners without fee, to the end that notice may be given of perſons qualified who are omitted, or of perſons inſerted by miſtake who ought to be omitted. 3 *G.* 2. *c.* 25. *ſ.* 1.

Penalty on the petty conſtable, for inſerting perſons wrongfully.

4. And if ſuch petty conſtable ſhall wilfully omit any perſon who ought to be inſerted, or inſert any one who

who ought to be omitted, or ſhall take any reward for omitting or inſerting any perſon, he ſhall forfeit 20s, on conviction before one juſtice, on confeſſion, or oath of one witneſs; half to the informer and half to the poor of the pariſh or place, for which the liſt is returned; if not paid in five days, to be levied by diſtreſs. And ſuch juſtice ſhall, in writing under his hand, certify the ſame to the next ſeſſions; who ſhall direct the clerk of the peace to inſert or ſtrike out the name of ſuch perſon ſo inſerted or omitted wrongfully. 3 *G.* 2. *c.* 25. *ſ.* 2.

Liſts to be delivered in at the ſeſſions.

5. The ſaid petty conſtables, at *Michaelmas* ſeſſions, ſhall deliver in the liſts in open court. 7 & 8 *W.* *c.* 32. *ſ.* 4.

Or inſtead of this, after they have compleated their liſts, it ſhall be ſufficient if they ſubſcribe the ſame in the preſence of one juſtice, and at the ſame time atteſt the truth thereof upon oath to the beſt of their knowledge or belief: And then the ſaid liſt, being firſt ſigned by the juſtice, and ſubſcribed as aforeſaid, ſhall be delivered by the ſaid petty conſtables to the high conſtables, who ſhall deliver in the ſame at the ſaid ſeſſions in open court, atteſting at the ſame time upon oath the receipt of ſuch liſts from the petty conſtables, and that no alteration hath been made therein ſince their receipt thereof. 3 *G.* 2. *c.* 25. *ſ.* 7.

Penalty on petty conſtables for not returning liſts.

6. The conſtable failing to make return ſhall forfeit 5l to the king, to be recovered by bill, plaint, or information. 7 & 8 *W.* *c.* 32. *ſ.* 4.

Perſons not qualified, how diſcharged.

7. And if any perſon, not qualified, ſhall find his name mentioned in ſuch liſt, and the perſon required to make ſuch liſt ſhall refuſe to omit him, or think it doubtful whether he ought to be omitted; the juſtices at the ſeſſions to which the liſts ſhall be returned, on ſatisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be ſtruck out, or omitted to be entred in the book. 3 *G.* 2. *c.* 25. *ſ.* 1.

Liſts to be entred by the clerk of the peace;

8. The juſtices ſhall then cauſe the liſts to be fairly entred in a book by the clerk of the peace, to be by him provided and kept for that purpoſe amongſt the records of the ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 4.

on pain of 20l.

9. Clerk of the peace neglecting his duty herein, ſhall forfeit 20l, to him who ſhall ſue by indictment at the ſeſſions. 3 *G.* 2. *c.* 25. *ſ.* 2.

Duplicates thereof to be delivered to the sheriff

10. Duplicates of the said lists, when delivered in at the sessions, and entred in such book to be kept by the clerk of the peace for that purpose, shall during the said sessions, or within ten days after, be delivered by the clerk of the peace to the sheriff. 3 *G.* 2. *c.* 25. *s.* 2.

The same to be entred by the sheriff.

11. And the sheriff shall immediately take care, that the names shall be entred alphabetically, with their additions and places of abode, in a book to be kept by him for that purpose. 3 *G.* 2. *c.* 25. *s.* 2.

Sheriff shall return none but those in the duplicates.

12. And if the sheriff shall summon and return any person to the assizes, whose name is not in the duplicates; the judge may on examination in a summary way, fine him not exceeding 10 l, nor less than 40 s. 3 *G.* 2. *c.* 25. *s.* 3.

III. Of the sheriff's summoning and returning jurors.

Sheriff to summon jurors to the sessions.

1. By a clause in the commission of the peace, it is said, —— We command our sheriff, that at certain days, which you (the justices) shall make known to him, he cause to come before you so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth shall be the better known and inquired into.

Whether the sessions may order a jury to be returned immediately.

2. It seems that justices of the peace may not order a jury to be returned immediately, nor on the same day, for the trial of a prisoner arraigned before them, as justices of gaol delivery may, unless the crime amount to felony, or the party consent to be tried immediately. 2 *Haw.* 406.

Whether by award of the court without precept.

3. Also it seems that a jury may not regularly be returned before justices of the peace in their sessions, by a bare award of the court, as before justices of gaol delivery; but that there ought to be a particular precept to the sheriff for that purpose. 2 *Haw.* 405, 406.

How they may do the same in cases of felony.

4. But in cases of felony it is agreed (4 *Inst.* 164.) and is the usual practice, after the prisoners are arraigned and have pleaded to the country, for the justices to issue a precept to the sheriff, in nature of a *venire facias*, which may bear teste the same day that the prisoners plead, commanding the sheriff to return 24 jurors, to try the issue upon such a day; or they may make it returnable the same day that the prisoner pleads, as at the hour of one in the afternoon, or the like: and this precept must be in the name, and under the seals of the justices, or two of them

them (1 Q.) and not barely upon the award of the roll: 2 *H. H.* 261, 262.

5. The writ of *venire facias* by the ſtatute of the 4 & 5 *W.* c. 24. ſhall be after this form: *The king*, &c. *We command*, &c. *that you cauſe to come before*, &c. *twelve free and lawful men of the vicinage of* A. *every of whom ſhall have* 10 *l of land, tenements, or rents, by the year, at leaſt; by whom*, &c. *and who neither*, &c. ſ. 15. (B.) Form of the venire facias.

6. The reaſon why they are required to come from the vicinage is, for that the neighbours are preſumed to know what is done in the neighbourhood. 1 *Inſt.* 158. Why the jurors ſhall be returned of the neighbourhood.

But yet this is not neceſſarily required; for they of one ſide of the county, are by law of the neighbourhood, to try an offence of the other ſide of the county. 2 *H. H.* 264.

And by the 4 *An.* c. 16. ſ. 6, 7. and 24 *G.* 2. c. 18. ſ. 3. to prevent challenges for default of hundredors, every *venire facias* for the trial of an iſſue in any action in the courts at *Weſtminſter*, or in any action or information on a penal ſtatute, ſhall be awarded of the body of the county where ſuch iſſue is triable.

7. And although the words of the writ be twelve, yet by the ancient courſe, the ſheriff muſt return 24, for the expedition of juſtice; for if twelve only ſhould be returned, there would ſeldom a full jury appear; and in this caſe uſage and cuſtom makes the law. 2 *H. H.* 263 *Read.* Jur. How many ſhall be returned and ſerve.

By the general precept that iſſues before a ſeſſion is, to return 24, and commonly the ſheriff returns upon that precept 48. 2 *H. H.* 263.

But in iſſues of *niſi prius*, the ſheriff ſhall, upon his return of the writ of *venire facias juratores* (unleſs in cauſes intended to be tried at bar, or where a ſpecial jury ſhall be appointed) annex a panel to the ſaid writ, containing the chriſtian and ſurname, additions, and places of abode, of a competent number of jurors, the names of the ſame perſons to be inſerted in the panel annexed to every *venire facias*, for the trial of all iſſues at the ſame aſſizes; which number of jurors ſhall be not leſs than 48 in any county, nor more than 72, unleſs the judges ſhall order otherwiſe. And the writs of *habeas corpora juratorum*, or *diſtringas*, ſubſequent to ſuch writ of *venire facias juratores*, need not have inſerted in the bodies of ſuch writs the names of all the perſons contained in ſuch panel, but it ſhall be ſufficient to inſert in the mandatory part of ſuch writs reſpectively,

tively, *the bodies of the ſeveral perſons named in the panel annexed to this writ*, or words of the like import, and to annex to ſuch writs reſpectively panels, containing the ſame names as were returned in the panel to ſuch *venire facias*, with their additions and places of abode, that the parties concerned in any ſuch trials may have timely notice of the jurors who are to ſerve at the next aſſizes, in order to make their challenges to them, if there be cauſe: and the perſons named in ſuch panels ſhall be ſummoned at the next aſſizes and no other. 3 *G.* 2. *c.* 25. *ſ.* 8. It is true, this gives them an opportunity of knowing how to make their challenges; but it alſo gives them an opportunity to another purpoſe, namely, of labouring the jurors, —— a practice which cannot be too much diſcouraged.

In *Wales*; the ſheriff ſhall ſummon out of every hundred or commote, not leſs than ten, nor more than fifteen; unleſs the judges ſhall order otherwiſe. 3 *G.* 2. *c.* 25. *ſ.* 9.

And in the counties palatine; The ſheriff ſhall ſummon not leſs than 48, nor more than 72 (unleſs the judges order otherwiſe); and ſhall eight days before the courts be held, cauſe a liſt to be made of the perſons ſummoned, which ſhall be hung up in the ſheriff's office, to be inſpected by any perſon. 3 *G.* 2. *c.* 25. *ſ.* 10.

Upon the grand jury; there may be, and uſually are, more than 12: but if there be 12 aſſenting, tho' others diſſent, it is not neceſſary for the reſt to agree. 2 *H. H.* 161.

But upon a trial by a petit jury; it can be by no more nor leſs than 12, and all aſſenting to the verdict. 2 *H. H.* 161.

In the county of *York*; only one panel of 48 freeholders and copyholders, and no more, ſhall be returned to ſerve on the grand inqueſt at the aſſizes; and at the ſeſſions, not above 40, either upon the grand inqueſt, or other ſervice there. 7 *&* 8 *W. c.* 32. *ſ.* 8.

Time and manner of ſummons.

8. Every ſummons of jurors ſhall be made by the ſheriff, his officer, or lawful deputy, ſix days before at the leaſt (and in *Wales* eight days before, and in the counties *Palatine* 14 days before, 3 *G.* 2. *c.* 25. *ſ.* 9, 10.) ſhewing to every perſon ſo ſummoned the warrant under the ſeal of the office wherein they are appointed to ſerve; and if ſuch juror be abſent from the place of his habitation, notice of the ſummons ſhall be given by leaving a note thereof in writing, under the hand of ſuch officer, at the dwelling houſe of ſuch juror, with ſome

perſon there inhabiting in the ſame. 7 & 8 *W.* *c.* 32. *ſ.* 5.

9. If the ſheriff, his deputy, or bailiff, neglect their duty herein, or excuſe any perſon for favour or reward; he ſhall forfeit 20*l*, to him who ſhall ſue. 7 & 8 *W.* *c.* 32. *ſ.* 6. Or, he may be fined 10*l*, or under, by the judge of aſſize. 3 *G.* 2. *c.* 25. *ſ.* 6. Penalty on the ſheriff or bailiff neglecting or miſbehaving.

And no bailiff, or other officer, ſhall ſummon any perſon, other than ſuch whoſe name is ſpecified in a mandate ſigned by the ſheriff or under ſheriff, and directed to ſuch bailiff or other officer; on pain of 10*l*, on a ſummary conviction before the judge of aſſize. 3 *G.* 2. *c.* 25. *ſ.* 6.

In the caſe of *K.* and *Whitaker*, *H.* 18 *G.* 3. The defendant was ſummoning bailiff to the ſheriff of *Middleſex*, and it was his province to ſummon jurors to attend to try cauſes. An attachment was granted againſt him, upon a charge of demanding and receiving money from ſeveral of the inhabitants to excuſe them from ſerving; and for ſummoning ſuch as refuſed to pay him, more frequently than it came to their turn. Being examined upon interrogatories, it appeared to the court upon the report of Sir *James Burrow*, that he admitted having received ſmall ſums from ſeveral individuals: That in ſome years, he had received in the whole about ſixty or ſeventy pounds; and in every year ſomething, tho' ſometimes not more than twenty pounds. But he denied ever having demanded it, or having ever been guilty of partiality, either in excuſing thoſe who paid him, or in ſummoning thoſe more frequently than he ought to have done who refuſed to pay him. He ſwore he received it only as a Chriſtmaſs-box, which had been cuſtomary; and in no other view whatever: And poſitively denied, that he ever acted with any partiality in conſequence of its being given or refuſed.—The court thought this to be a very bad practice, and of very evil example: Wherefore they fined him two hundred pounds, and ordered him to be committed till paid. They added, that the ſheriff ſhould be informed of this, and that it ſhould be recommended to him to diſcharge this man from his office of ſummoning bailiff. *Cowper.* 752.

10. No perſons ſhall be returned as jurors at the aſſizes; who have ſerved within one year before in the county of *Rutland*, or two years before in any other county (not being a county of a city or town, and except the counties of *York* and of *Middleſex*); on pain that the ſheriff, on examination and proof in a ſummary way, How often they ſhall be ſummoned and ſerve.

way, ſhall be fined by the judge not exceeding 5l. 3 *G.* 2. *c.* 25. *ſ.* 4.

And the ſheriff ſhall enter in a book, the names of ſuch perſons as ſhall be ſummoned and ſhall ſerve at the aſſizes, with their additions, and places of abode alphabetically, and the times of their ſervices; and every perſon who hath ſerved, ſhall (on application by him made to the ſheriff) have a certificate *gratis*, teſtifying his attendance: and the ſaid book ſhall be tranſmitted to the ſucceeding ſheriff. 3 *G.* 2. *c.* 25. *ſ.* 5.

In the county of *York*; they ſhall not be returned above once in four years, at the aſſizes or ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 7. 10 *An.* *c.* 14. *ſ.* 5.

And if the ſheriff of the county of *York*, neglect to keep ſuch book as above, or to enter the names, or to deliver over to his ſucceſſor the entries made for four years next before, or to deliver the certificate *gratis*; he ſhall forfeit 100l, half to the king, and half to him that ſhall ſue. 3 & 4 *An.* *c.* 18. *ſ.* 3.

And if he ſhall ſummon or return any juror, who ſhall have ſerved within four years, and ſhall not on producing the certificate diſcharge the ſummons or return, and thereof give notice to the party ſummoned, ſix days before the aſſizes or ſeſſions; he ſhall forfeit 20l, to the party, with full coſts. 3 & 4 *An.* *c.* 18. *ſ.* 4.

In the county of *Middleſex*: No perſon ſhall be returned to ſerve as a juror, at any ſeſſions of *niſi prius*, who hath been returned in the two terms or vacations next before; on pain of the ſheriff being fined by the judge 5l or under. 4 *G.* 2. *c.* 7. *ſ.* 2.

And by the 7 & 8 *W.* *c.* 32. *ſ.* 9. The inhabitants of the city and liberty of *Weſtminſter* ſhall be exempted from ſerving in any jury at the ſeſſions for *Middleſex*, by reaſon of their attendance at the courts of *Weſtminſter-hall*.

Jury of view.

11. In any actions brought in the courts at *Weſtminſter*, where it ſhall appear to the court that it is neceſſary that the jurors ſhall have the view of the place in queſtion, they may order ſpecial writs of *diſtringas* or *habeas corpora* to iſſue, by which the ſheriff ſhall be commanded, to have ſix out of the firſt 12 of the jurors, or ſome greater number of them, at the place in queſtion, ſome convenient time before the trial; who ſhall have the matters in queſtion ſhewn to them by two perſons in the ſaid writs named; and the ſheriff by a ſpecial return upon the ſame, ſhall certify that the view hath been had

had according to the command of the ſaid writ. 4 *An.* *c.* 16. *ſ.* 8.

And by the 3 *G.* 2. *c.* 25. *ſ.* 14. Where a view ſhall be allowed, ſix or more of the jurors in the panel, who ſhall be conſented to by the parties on both ſides, or their agents, or if they cannot agree, by the proper officer or judges of the court,——ſhall have the view, and ſhall be firſt ſworn, or ſuch of them as appear, before any drawing, and others ſhall be drawn to make up the number.

The uſual way of granting views now is on the parties entering into a rule by conſent, that in caſe no view be had (as if no jurors attend), or if a view be had by any of the jurors (tho' not being ſix of the firſt twelve), yet the trial ſhall proceed, and no objection be made on account thereof, or for want of a proper return. *Burr. Manſf.* 256.

12. *Tr.* 8 *W.* a rule was made, that when the maſter is to ſtrike a jury, *viz.* 48, out of the freeholders book, he ſhall give notice to the attornies of both ſides to be preſent; and if the one comes, and the other does not, he that appears ſhall according to the ancient courſe ſtrike out 12, and the maſter ſhall ſtrike out other 12 for him that is abſent. 1 *Salk.* 405. Special jury.

But if by rule of court, the maſter is ordered to ſtrike a jury, in caſe it be not expreſſed in ſuch rule, that the maſter ſhall ſtrike 48, and each of the parties ſhall ſtrike out 12; the maſter is to ſtrike 24, and the parties have no liberty to ſtrike out any. 1 *Salk.* 405. *M.* 8 *W.*

And the party who ſhall apply for a ſpecial jury to be ſtruck, ſhall pay the fees for the ſtriking ſuch jury, and ſhall not be allowed the ſame on taxation. 3 *G.* 2. *c.* 25. *ſ.* 16. And alſo ſhall pay all the expences occaſioned by the trial of the cauſe, and ſhall have no other allowance for the ſame upon taxation of coſts, than he would be intitled to, if the cauſe had been tried by a common jury; unleſs the judge ſhall in open court certify upon the back of the record, that the ſame was a cauſe proper to be tried by a ſpecial jury. 24 *G.* 2. *c.* 18. *ſ.* 1.

And no perſon who ſhall ſerve upon a ſpecial jury, ſhall be allowed more than the ſum which the judge ſhall think reaſonable, not exceeding one guinea, except in cauſes wherein a view is directed. 24 *G.* 2. *c.* 18. *ſ.* 2.

On a motion for a ſpecial jury, in the caſe of the *King* againſt *Maccartney*, *T.* 2 *G.* for the murder of the duke of *Hamilton*, it was held by *Parker* chief juſtice, that there cannot

cannot be a ſpecial jury in caſes of *treaſon or felony*; for the party muſt have the advantage of challenging 20 in caſe of felony, and 35 in caſe of high treaſon, without cauſe ſhewn. In caſes of ſpecial juries, there are 48 brought before the maſter, and he takes 24; ſo there cannot be a rule for a good jury, nor for a ſpecial jury, in this caſe of a trial at bar; for the jury will be the ſame with or without ſuch a rule, for they are all good juries in *Middleſex*, and ſo in all caſes of jurors at the bar; and if there ſhould be a ſpecial jury, it would take away the advantage the party has of challenging peremptorily, although not of ſhewing cauſe. So no rule was made in this caſe, leſt the ſheriff in all other caſes, when there is no ſuch rule, ſhould not return a good jury. 21 *Viner*. 301.

Tales.

13. When a full jury at *niſi prius* (or on indictments, informations, or other actions on penal ſtatutes, 4 & 5 *P. & M. c.* 7.) ſhall not appear, or ſhall be reduced below the number by challenge, the judges on requeſt of the plaintiff (or defendant, 14 *El. c.* 9.) may command the ſheriff to appoint ſo many other able perſons of the county then preſent at the aſſizes, as ſhall make up a full jury; whoſe names ſhall be annexed to the panel. 35 *H.* 8. *c.* 6. *ſ.* 6.

And by the 4 & 5 *W. c.* 24. *ſ.* 18, 19. theſe tales-men, (*tales de circumſtantibus*) ſhall have each 51 a year, of like eſtate as other jurors; in Wales 31.

But by the 7 & 8 *W. c.* 32. *ſ.* 3. Tales-men in *niſi prius* ſhall be returned out of the other panels, returned to ſerve at the ſame aſſizes.

And the parties may have their challenges to the tales, as to other jurors. 35 *H.* 8. *c.* 6. *ſ.* 7.

And if ſuch tales-men, after they be called, be preſent, and do not appear, or after appearance do wilfully withdraw themſelves, the judges may fine them; which ſhall be levied as iſſues forfeited by jurors, for default of their appearance at common law, have been accuſtomed to be levied. 35 *H.* 8. *c.* 6. *ſ.* 9.

By the 4 & 5 *W. c.* 24. *ſ.* 20. No fee ſhall be taken by any ſheriff, clerk of aſſize, or any other perſon, for the return of any tales, or upon the account of any tales returned; on pain of 10l, half to the proſecutor, and half to the king.

Addition to be returned.

14. No ſheriff ſhall return any juror, without the addition of his dwelling, or ſome other addition by which he may be known; and no extract of iſſues ſhall be delivered out, without ſuch addition; on pain of five marks

marks to the king, and five marks to the party grieved; to be recovered in ſeſſions, or elſewhere. 27 *El. c.* 7.

15. By the common law, jurors returned, and not appearing, ſhall loſe and forfeit the iſſues returned upon them. 35 *H.* 8. *c.* 6. Jurors not appearing.

And if a juryman be called, and (being preſent) refuſe to appear; or, having appeared, withdraw himſelf before he be ſworn, the court may ſet a fine upon him at their diſcretion. 2 *H. H.* 309. 35 *H.* 8. *c.* 6. *ſ.* 9.

And by the 29 *G.* 2. *c.* 19. a juror not appearing and ſerving in any court of record within the city of *London*, or in any other city or town corporate, liberty, or franchiſe, after being openly called three times, and oath made of his having been ſummoned, ſhall (without reaſonable excuſe on oath or affidavit to the ſatisfaction of the court) be fined not more than 40*s*, nor leſs than 20*s*, and on refuſal to pay to ſuch perſon whom the judge or judges ſhall appoint to receive the ſame, they ſhall levy the ſame by warrant of diſtreſs, rendering the overplus, the reaſonable charges of diſtreſs and ſale being firſt deducted; the ſame to be paid to the proper officer of the place, to be applied to ſuch uſes as iſſues ſet on jurors or other fines ſet in ſuch courts are by charter, uſage, or preſcription applicable.

16. If the clerk of aſſize, or other officer, ſhall record the appearance of any perſon who did not appear; he ſhall, on conviction before the judge of aſſize in a ſummary way, forfeit not exceeding 10*l*, nor under 40*s*. 3 *G.* 2. *c.* 25. *ſ.* 3. Penalty of recording perſons who did not appear.

17. Laſt of all; The name of each perſon ſummoned to try the iſſues of *niſi prius*, with his addition and place of abode, ſhall be written in ſeveral and diſtinct pieces of parchment or paper, as near as may be of equal ſize, and delivered to the marſhal by the under ſheriff. And the ſame ſhall by the marſhal be rolled up, all, as near as may be, in the ſame manner, and put together in a box or glaſs to be provided for that purpoſe. And when any cauſe ſhall be brought on to be tried, ſome indifferent perſon by direction of the court, ſhall in open court draw out 12 of the ſaid parchments or papers one after another. And if any of the perſons, whoſe names ſhall be ſo drawn, ſhall not appear, or be challenged and ſet aſide; then ſuch further number, until 12 be drawn who ſhall appear, and after all cauſes of challenge, ſhall be allowed as fair and indifferent. And the ſaid 12 perſons ſo firſt drawn and appearing, and approved as indifferent, their names being marked in the panel, Drawing jurors names for trial.

and

and they being ſworn, ſhall be the jury to try the cauſe. And the names of the perſons ſo drawn and ſworn, ſhall be kept apart by themſelves in ſome other box or glaſs to be kept for that purpoſe, till ſuch jury ſhall have given in their verdict, and the ſame is recorded, or until ſuch jury ſhall by conſent of the parties, or leave of the court, be diſcharged. And then the ſame names ſhall be rolled up again, and returned to the former box or glaſs, there to be kept with the other names remaining at that time undrawn. And ſo *toties quoties*, as long as any cauſe remains then to be tried. Provided, that if any cauſe ſhall be brought on to be tried, before the jury in any other cauſe ſhall have brought in their verdict, or be diſcharged; the court may order 12 of the reſidue of the ſaid parchments or papers, to be drawn as aforeſaid. 3 *G.* 2. *c.* 25. *ſ.* 11, 12.

IV. Of the challenge of jurors.

And herein,

i. Of the ſeveral kinds of challenge:

ii. When the challenge is to be taken.

iii. How the challenge ſhall be tried.

iv. How panels may be reformed by the court, without challenge.

i. Of the ſeveral kinds of challenge.

Two kinds of challenge.

There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it ſtands *arrayed* in the *panel*, or little ſquare *pane* of parchment on which the jurors names are written: Or to the *polls*, by which are meant the ſeveral particular perſons or *heads* in the array. 1 *Inſt.* 156, 158.

To the array;

1. Challenge to the *array*, is in reſpect of the partiality or default of the ſheriff, coroner, or other officer that made the return: And this is two-fold;

Principal challenge to the array.

(1) Principal challenge to the array: Which if it is made good, is a ſufficient cauſe of exception, without leaving any thing to the judgment of the triers.

Cauſes of challenge of this ſort, are ſuch as theſe: If the ſheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintiff or defendant, the whole array ſhall

be quaſhed. If the plaintiff or defendant have an action of battery againſt the ſheriff, or the ſheriff againſt either party, this is a good cauſe of challenge. So if the plaintiff or defendant have an action of debt againſt the ſheriff; but otherwiſe it is, if the ſheriff have an action of debt againſt either party. Or if the ſheriff have parcel of the land depending upon the ſame title. Or if the ſheriff, or his bailiff which returned the jury, be under the diſtreſs of either party. Or if the ſheriff, or his bailiff, be either of counſel, attorney, officer, or ſervant of either party; goſſip; or arbitrator in the ſame matter, and treated thereof. 1 *Inſt.* 156.

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quaſhed: But now by the 24 *G.* 2. *c.* 18. *ſ.* 4. No challenge ſhall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is a party.

And the ſubject may challenge the array againſt the king; as in traverſe of an office, he that traverſeth may challenge the array: And ſo it is in caſe of life. 1 *Inſt.* 156.

And where a ſubject may challenge the array, for unindifferency, there the king being a party may alſo challenge for the ſame cauſe. 1 *Inſt.* 156.

The array challenged on both ſides ſhall be quaſhed. 1 *Inſt.* 156.

(2) Challenge to the array, for favour. He that taketh this muſt ſhew in certain the name of him that made it, and in whoſe time, and all in certainty. This kind of challenge, being no principal challenge, muſt be left to the diſcretion and conſcience of the triers. As if the plaintiff or defendant be tenant to the ſheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the ſon of the ſheriff, and the daughter of the party, or the like, is no principal challenge, but to the favour; but if the ſheriff marry the daughter of either party, or the like, this (as hath been ſaid) is a principal challenge. 1 *Inſt.* 156. Challenge to the array for favour.

But where the king is party, one ſhall not challenge the array for favour; becauſe in reſpect of his allegiance, he ought to favour the king more: But if the ſheriff be a menial ſervant of the king, there the challenge is good. 1 *Inſt.* 156. By which ſeems to be meant, that ſuch challenge is not good, without ſhewing ſome actual partiality in the ſheriff. 2 *Haw.* 419.

But the king may challenge the array for favour. 1 *Inſt.* 156.

To the polls; Peremptory challenge to the polls.

2. Challenge to the polls is threefold:

(1) Peremptory. This is ſo called, becauſe a perſon may challenge peremptorily, upon his own diſlike, without ſhewing of any cauſe.

This peremptory challenge ſhall not be allowed to the king; for it is provided by the 33 *Ed.* 1. *ſt.* 4. that he who challenges a juror for the king ſhall ſhew cauſe, and the truth thereof ſhall be inquired of. And this extends as well to criminal, as civil cauſes. However, if the king challenge a juror, he need not ſhew any cauſe of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the perſon challenged. And if the defendant, in order to oblige the king to ſhew cauſe, preſently challenge all the reſt, yet it hath been adjudged, that the defendant ſhall be firſt put to ſhew all his cauſes of challenge, before the king need to ſhew any. 2 *Haw.* 413.

And this peremptory challenge is not allowable to the party againſt the king, but only in caſe of treaſon or felony, in favour of life. 1 *Inſt.* 156.

But in caſe of treaſon or felony, the priſoner by the common law might peremptorily challenge 35, which was under the number of three juries; but by the ſtatute of the 22 *H.* 8. *c.* 14. *ſ.* 6. the number is reduced to 20, in petit treaſon, murder and felony; and in caſe of high treaſon, and miſpriſion of high treaſon, it was taken away by the ſtatute of the 33 *H.* 8. *c.* 23. but by the ſtatute of the 1 & 2 *P.* & *M.* *c.* 10. the common law was again revived for *any* treaſon, and therein the priſoner ſhall have his peremptory challenge to the number of 35. 1 *Inſt.* 156.

But as to all murders and other felonies, the ſtatute of the 22 *H.* 8. *c.* 14. taking away the peremptory challenge of above 20 ſtands in force. 2 *H. H.* 269. But if the party challenge above that number, he ſhall not have judgment of death, but his challenge ſhall be over-ruled, and he ſhall be put upon his trial. *H. Pl.* 259. 2 *H. H.* 270.

Principal challenge to the polls.

(2) Principal challenge to the polls: Where cauſe is ſhewn, but which if found true, ſtands ſufficient of itſelf, without leaving any thing to the triers.

Cauſes of principal challenge to the polls, are ſuch as theſe:

A peer is not to be ſworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his diſcharge. 1 *Inſt.* 156. 2 *Haw.* 415.

Want

Want of freehold, is a good cauſe of challenge. 1 *Inſt.* 156.

Alſo, if a perſon is an alien. 1 *Inſt.* 156.

If the juror be within the age of 21, it is a good cauſe of challenge. 1 *Inſt.* 157.

If a juror is above the age of 70, or is ſick, or is non reſident in the county, he may ſue out a writ of privilege for his diſcharge; but if he be returned and appear, he can neither be challenged by the party, nor excuſe himſelf from not ſerving, if there be not enow without him. 2 *Haw.* 418.

If the juror be of blood or kindred to either party, this is a principal challenge; for that the law preſumeth that one kinſman doth favour another, before a ſtranger; and how far remote ſoever he is of kindred, yet the challenge is good. 1 *Inſt.* 157.

Affinity, or alliance by marriage, is a principal challenge, if the ſame continues, or iſſue be had; otherwiſe, it is but to the favour. 1 *Inſt.* 157.

If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge in our books. 1 *Inſt.* 157.

If the juror hath part of the land that dependeth upon the ſame title, it is a principal challenge. 1 *Inſt.* 157.

It hath been allowed a good cauſe of challenge, on the part of the priſoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. 2 *Haw.* 418.

Likewiſe if the juror gave a verdict before, for the ſame cauſe, or upon the ſame title or matter, though between other perſons. 1 *Inſt.* 157.

So likewiſe one may be challenged, that he was indictor of the plaintiff or defendant in the ſame cauſe; for ſuch a one, it may be thought, will not falſify his former oath. *Lamb.* 554. And if a grand juryman who was one of the indictors in the ſame cauſe, be returned upon the petit jury, and do not challenge himſelf, he ſhall be fined. 2 *H. H.* 309.

If a juror hath been an arbitrator, choſen by the plaintiff or defendant in the ſame cauſe; and hath been informed thereof, or treated of the matter, this is a principal challenge; otherwiſe, if he were choſen indifferently by either of the parties. 1 *Inſt.* 157.

If he be of counſel, ſervant, or of fee, of either party, it is a principal challenge. 1 *Inſt.* 157.

Alſo, if a juryman, before he be ſworn, take information of the caſe, this is cauſe of challenge. 2 *H. H.* 306.

If any, after he be returned, do eat and drink at the charge of either party, it is a principal cauſe of challenge. 1 *Inſt.* 157.

But it is not a principal challenge to a juror, but only to the favour, that the proſecutor was lately entertained at his houſe. 3 *Salk.* 81.

Actions brought by the juror againſt either of the parties, or by either of the parties againſt him, which imply malice or diſpleaſure, are cauſes of principal challenge; other actions, which do not imply malice or diſpleaſure, are but to the favour. 1 *Inſt.* 157.

In a cauſe where the parſon of the pariſh is party, and the right of the church cometh in debate, a pariſhioner is a principal challenge. 1 *Inſt.* 157.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conſcience, this is no challenge at all, but lawful for him to do it. 1 *Inſt.* 157.

That the juror is a fellow ſervant with either party, is no principal challenge, but to the favour. 1 *Inſt.* 157.

If the juror be attainted or convicted of treaſon or felony, or for any offence to life or member, or in attaint for a falſe verdict, or for perjury as a witneſs, or in a conſpiracy at the ſuit of the king, or in any ſuit (either for the king or for any ſubject) be adjudged to the pillory, tumbrel, or the like, or to be branded or ſtigmatized, or to have any other corporal puniſhment, whereby he becometh infamous; theſe, and the like, are principal cauſes of challenge. 1 *Inſt.* 158.

So it is, if a man be outlawed in treſpaſs, debt, or any other action, for he is *exlex*, and therefore not a lawful man. 1 *Inſt.* 158.

And old books have ſaid, that if he be excommunicated, he could not be of a jury. 1 *Inſt.* 158.

Challenge to the polls for favour.

3. Challenge to the polls for favour. This is, when either party cannot take any principal challenge, but ſheweth cauſes of favour, which muſt be left to the conſcience and diſcretion of the triers, upon hearing their evidence to find him favourable, or not favourable. And the cauſes of favour are infinite. For all which, the rule of law is, that he muſt ſtand indifferent, as he ſtands unſworn. 1 *Inſt.* 157.

II. When

ii. When the challenge is to be taken.

1. No challenge can be taken either to the array, or to the polls, till a full jury have appeared. 2 *Haw.* 412.

2. He that hath divers challenges muſt take them all at once. 1 *Inſt.* 158.

3. If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. 1 *Inſt.* 158.

4. After challenge to the array, and trial duly returned, if the ſame party take a challenge to the polls, he muſt ſhew cauſe preſently. 1 *Inſt.* 158.

5. If a juror be formerly ſworn, if he be challenged, the party muſt ſhew cauſe preſently, and that cauſe muſt riſe ſince he was ſworn. 1 *Inſt.* 158.

6. When the king is party, the defendant that challengeth for cauſe muſt ſhew his cauſe preſently. 1 *Inſt.* 158.

7. But if a juror be challenged between party and party, and there be enough of the panel beſides; the cauſe of challenge needeth not to be ſhewed, unleſs the other ſide challenges *touts peravail.* Tr. p. pais 143.

8. If a man, in caſe of treaſon or felony, challenge for cauſe, and he be tried indifferent, yet he may challenge him peremptorily. 1 *Inſt.* 158.

9. The priſoner muſt take all peremptory challenges himſelf, even in caſes wherein he may have counſel. 2 *Haw.* 413.

10. The challenge to the array, muſt be in writing (C); but where the challenge is to the polls, it is a ſhort way by a verbal challenge. *Tr. p. pais* 172.

iii. How the challenges ſhall be tried.

1. The challenge of him who firſt challenged ſhall be firſt tried. *Tr. p. pais* 144.

2. If the array be challenged, it lies in the diſcretion of the court how it ſhall be tried; ſometimes it is done by two coroners, and ſometimes by two of the jury, with this difference, that if the challenge be for kindred in the ſheriff, it is moſt fit to be tried by two of the jurors returned; if the challenge found in favour of partiality, then by any other two aſſigned thereunto by the court. 2 *H. H.* 275.

3. When any challenge is made to the polls, if it be before any jurors are ſworn, the court ſhall chuſe the triers; if two are ſworn, they ſhall try; and if they try one indifferent, and he be ſworn, then he and the two triers ſhall try another; and if another be tried indifferent, and he be ſworn, then the two triers ceaſe, and the two that be ſworn on the jury ſhall try the reſt: If the plaintiff challenge ten, and the defendant one, and the twelfth is ſworn, becauſe one cannot try alone, there ſhall be added to him one challenged by the plaintiff, and another by the defendant. *Finch.* 112. 1 *Inſt.* 158.

4. The trier's oath is, "You ſhall well and truly try, "whether *A. B.* (the juryman challenged) ſtand indif- "ferent between the parties to this iſſue: So help you "God." 1 *Salk.* 152.

5. If the cauſe of challenge touch the diſhonour or diſcredit of the juror, he ſhall not be examined on his oath; but in other caſes, he ſhall be examined on his oath, to inform the triers. 1 *Inſt.* 158. 1 *Salk.* 153.

6. If the array be quaſhed againſt the ſheriff, the proceſs of *venire facias juratores* ſhall be directed to the coroners; if againſt any of the coroners, then proceſs ſhall be awarded to the reſt; if againſt all of them, then the court ſhall appoint certain eliſors (ſo named *ab eligendo*), againſt whoſe return no challenge ſhall be taken to the array, becauſe they were appointed by the court; but he may have his challenge to the polls. 1 *Inſt.* 158.

iv. How panels may be reformed by the court, without challenge.

Beſides the challenges which may be taken by the plaintiff or defendant, it is enacted by the 3 *H.* 8. *c.* 12. that in caſes where the king is party, the juſtices of aſſize, or of the peace in ſeſſions, may reform the panels of jurors, by putting to, and taking out of the names of the perſons impanelled by their diſcretion; and if the ſheriff do not return the panel ſo reformed, he ſhall forfeit 20l, half to the king, and half to him that ſhall ſue.

And this extends both to grand and petit juries. 2 *H. H.* 156.

And hence it is, that if a priſoner be arraigned before the judge that ſits upon the crown ſide, it is uſual for the judge to ſend for a jury to the judge of *niſi prius*, and when the jury is brought, the ſheriff returns them between

the king and the priſoner; which is by virtue of this ſtatute. 2. *H. H.* 265.

V. Of the demeanor of jurors in giving their verdict.

1. By the law of *England*, a jury after their evidence given upon the iſſue, ought to be kept together in ſome convenient place, without meat or drink, fire or candle, and without ſpeech with any, unleſs it be the bailiff, and with him only if they be agreed. 1 *Inſt.* 227. Jurors to be kept without meat or drink.

2. And the bailiff ought to be ſworn to keep them together, and not to ſuffer any to ſpeak with them. 2 *H. H.* 296. Bailiff ſworn to keep them.

3. And if the jury after their evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict, it is finable, but it ſhall not avoid the verdict; but if before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it ſhall avoid the verdict; but if it be given for the defendant it ſhall not avoid it, and ſo on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do paſs, it ſhall not avoid the verdict. 1 *Inſt.* 227. Whether eating and drinking ſhall avoid the verdict.

4. But with the aſſent of the juſtices they may both eat and drink; as if any of the jurors fall ſick before they be agreed of their verdict, then by the aſſent of the juſtices he may have meat or drink, and alſo ſuch other things as be neceſſary for him and his fellows alſo, at their own coſts, or at the indifferent coſts of the parties, if they ſo agree: And if they cannot agree, the juſtices may in ſuch caſe ſuffer the jury to have both meat and drink for a time, to ſee whether they will agree. *Dr. & St.* 158. In what caſes they may eat or drink.

5. After their departure they may deſire to hear one of the witneſſes again, and it ſhall be granted ſo he deliver his teſtimony in open court; and alſo they may deſire to propound queſtions to the court for their ſatisfaction, and it ſhall be granted, ſo it be in open court. 2 *H. H.* 296. May re-examine witneſſes.

6. But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in iſſue, or any evidence, or any writing touching the matter in iſſue, which was not given in evidence, May hear no evidences but in court.

it ſhall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant, and ſo on the contrary. But if the jury carry away any writing unſealed, which was given in evidence in open court, this ſhall not avoid their verdict, albeit they ſhould not have carried it with them. 1 *Inſt.* 227.

Cannot be diſcharged without giving a verdict.

7. A jury charged and ſworn in a capital caſe, cannot be diſcharged (without the priſoner's conſent) till they have given a verdict. 2 *Hawk.* 439. *Foſt.* 22. Sir *John Wedderbourn*'s caſe.

And the king cannot be nonſuit, for he is in judgment of law ever preſent in court. 1 *Inſt.* 227.

May be fined for ſaying they are agreed, when they are not.

8. If a jury ſay they are agreed, and it being aſked who ſhall ſay for them, they ſay their foreman, but upon farther inquiry they are not agreed, they may be fined. 2 *H. H.* 309.

Caſting lots for their verdict.

9. If a jury caſt lots for their verdict, it ſhall be ſet aſide, and they ſhall be fined for the contempt. 3 *Keb.* 805. 2 *Lev.* 140, 205. 2 *Jones* 83.

M. 12 *G. Hale* and *Cove.* The jury having ſet up all night agreed in the morning to put two papers into a hat, marked *Plaintiff* and *Defendant*, and ſo draw lots; *Plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict muſt be ſet aſide; but the queſtion was, whether the defendant ſhould pay coſts; the court inclined to give the plaintiff coſts, comparing it to the caſe of a verdict againſt evidence; but at laſt it was agreed, that the coſts ſhould wait the event of a new trial. *Str.* 642.

Giving verdict without evidence.

10. The jury may give a verdict without teſtimony, when they themſelves have conuſance of the fact. *Tr. p. pais* 279. 1 *Vent.* 67.

Juror may be a witneſs.

11. But if they give a verdict on their own knowledge, they ought to tell the court ſo; but they may be ſworn as witneſſes; and the fair way is to tell the court before they are ſworn that they have evidence to give. 1 *Salk.* 405.

For certainly it is of dangerous conſequence, to receive a verdict againſt evidence given, on ſuppoſal that ſome of the jury knew otherwiſe, or on private information given by any juryman to the reſt, where he cannot be croſs examined. *Tr. p. pais* 209.

Private verdict.

12. After they be agreed, they may in cauſes between party and party, if the court be riſen, give a private verdict, before any of the judges of the court; and then they may

may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court ſhall ſtand. 1 *Inſt.* 227.

But in criminal caſes of life or member, the jury can give no private verdict, but they muſt give it openly in court. 1 *Inſt.* 227.

13. In all cauſes, and in all actions, the jury may give either a general or a ſpecial verdict, as well in cauſes criminal as civil; and this court ought to receive a ſpecial verdict, if pertinent to the point in iſſue. 3 *Salk.* 373. Special verdict.

Thus if one be indicted for grand larceny, that is, for ſtealing goods above the value of 12 d, yet the jury may find ſpecially, that he is guilty, but that the goods are not above the value of 12 d. In which caſe he ſhall only have judgment of petty larceny. 1 *Haw.* 95.

14. Jurors are to try the fact, and the judges ought to judge according to the law that ariſeth upon the fact. 1 *Inſt.* 226. Jurors to try not the law, but the fact.

But if they will take upon them the knowledge of the law upon the matter, they may; yet it is dangerous, for if they miſtake the law, they run into the danger of an attaint; therefore to find the ſpecial matter is the ſafeſt way, where the caſe is doubtful. 1 *Inſt.* 228.

But if the jury find according to the direction of the judge in matter of law, although the judge be miſtaken, yet the jury ſhall not be liable to attaint. L. *Raym.* 470.

15. It hath been adjudged, that if the jury acquit a priſoner of an indictment of felony againſt manifeſt evidence, the court may, before the verdict is recorded, but not after, order them to go out again, and reconſider the matter; but this by many is thought hard, and ſeems not of late years to have been ſo frequently practiſed as formerly. However it is ſettled, that the court cannot ſet aſide a verdict which acquits a defendant, of a proſecution properly criminal, as it ſeems that they may a verdict that convicts him, for having been given contrary to evidence, and the directions of the judge, or any verdict whatſoever for a miſtrial. 2 *Haw.* 442. Finding againſt evidence.

16. After the verdict recorded, the jury cannot vary from it; but before it be recorded, they may vary from the firſt offer of their verdict, and that verdict which is recorded ſhall ſtand. 1 *Inſt.* 227. Varying from the verdict.

17. A verdict finding an impoſſible matter ſhall not be void, if at the ſame time it find the ſubſtance of the Verdict finding an impoſſibility.

the indictment; but the ſurplus ſhall be rejected. 1 *Hawk.* 77.

Verdict how far to be taken ſtrictly.

18. Verdict ſhall not be taken ſo ſtrictly as pleadings; but the ſubſtance of the thing in iſſue ought to be always found. 3 *Salk.* 373.

Where they cannot agree.

19. It is ſaid, that if the jurors agree not, before the departure of the juſtices of gaol delivery into another county, the ſheriff muſt ſend them along in carts, and the judge may take and record their verdict in a foreign county. 2 *H. H.* 297. *Tr. p. pais* 274, 285. 1 *Vent.* 97.

But if the caſe ſo happen, that the jury can in no wiſe agree, as if one of the jurors knoweth in his own conſcience the thing to be falſe, which the other jurors affirm to be true, and ſo he will not agree with them in giving a falſe verdict, and this appeareth to the juſtices by examination; the juſtices (as it ſeemeth) in ſuch caſe may take ſuch order in the matter, as ſhall ſeem to them by their diſcretion to ſtand with reaſon and conſcience, by awarding a new inqueſt, or otherwiſe, as they ſhall think beſt by their diſcretion, like as they may do, if one of the jury die before the verdict. *Dr. & Stud.* 158.

M. 4 *G.* 3. *K. & Gould.* The defendant was indicted for murder. The jury were ſworn, and part of the evidence given, but before the trial was over, one of the jurymen was taken ill, went out of court with the judge's leave, and preſently after died. The judge doubting whether he could ſwear another jury, diſcharged the eleven, and left the priſoner in gaol. The court was moved for a writ of *habeas corpus* to bring up the priſoner that he might be diſcharged, having been once put upon his trial. This being a new caſe the court ſaid they would adviſe with the other judges upon it; and afterwards they all agreed, that the priſoner might be tried at the next aſſizes, or the judge might have ordered a new jury to have been ſworn immediately.

VI. Of the indentity and puniſhment of jurors.

Threatning a juror.

1. If a man aſſault or threaten a juror, for giving a verdict againſt him, he is highly puniſhable by fine and impriſonment; and if he ſtrike him in the court, in the preſence of the judge of aſſize, he ſhall loſe his hand, and his goods, and profits of his lands during life, and ſuffer perpetual impriſonment. 1 *Hawk.* 57, 58.

Juror not appearing.

2. Where more than one of the perſons returned on a jury do appear, but not a ſufficient number to take an inqueſt,

queſt, and ſome of the others come within view of the court, or into the ſame town in which the court is holden, but refuſe to come into the court to be ſworn; upon proof of ſuch matter, the court may, at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of ſuch defaulter's lands, and after ſuch inquiry made, either ſummon them to appear, on pain of forfeiting ſuch ſum as their lands have been found to be worth by the year, or ſome leſſer ſum, or impoſe a fine of the like ſum upon them, without any farther proceeding. But it ſeems, that ſuch juror ſhall be liable to loſe his iſſues only for ſuch default, and not the yearly value of his lands, unleſs the party pray it: But a juror who hath actually appeared, and after makes default, is ſaid to be ſubject to ſuch forfeiture of the yearly value of his lands, whether the party pray it or not; becauſe his contempt appears to the court by its own record; yet even in this caſe, the court in diſcretion will ſometimes only impoſe a ſmall fine. Alſo it ſeems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to loſe his iſſues, or to be amerced, but not to be fined. 2 *Haw.* 146.

And by the 3 *G.* 2. *c.* 25. *ſ.* 13. in cauſes of *niſi prius*, every perſon whoſe name ſhall be drawn, and who ſhall not appear, after being openly called three times, ſhall on oath made of his having been lawfully ſummoned, forfeit not exceeding 5 l, nor leſs than 40 s; unleſs ſome reaſonable cauſe of abſence be proved, by oath or affidavit, to the ſatisfaction of the judge.

Where a grand jury may be fined for not finding a bill.

3. If the grand jury at the aſſizes or ſeſſions will not find a bill, the court may impanel another inqueſt (by the 3 *H.* 7. *c.* 1.) to inquire of their concealments and thereupon ſet fines upon them; but it ſeemeth that fines ſet upon grand inqueſts in any other manner, are not warrantable by law: for the privilege of an *Engliſhman* is, that his life ſhall not be drawn in danger without due preſentment or indictment, and this would be but a ſlender ſcreen or ſafeguard, if every juſtice of the peace, or judge of aſſize, may make the grand jury preſent what he pleaſes, or otherwiſe fine them. 2 *H. H.* 160, 1.

Juror taking a bribe.

4. If any juror do take of either party to give his verdict, he ſhall on conviction by bill or plaint, before the court where the verdict ſhall paſs, forfeit ten times as much as he has taken, half to the king, and half to him that ſhall ſue. 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. *c.* 8. 38 *Ed.* 3. *ſt.* 1. *c.* 12.

Whether a juror may be proſecuted for a verdict in a criminal matter.

5. It ſeems to be certain, that no one is liable to any proſecution whatſoever, in reſpect of any verdict given by him in a *criminal* matter, either upon a grand or petit jury;

ry; for ſince the ſafety of the innocent, and puniſhment of the guilty doth ſo much depend upon the fair and upright proceedings of jurors, it is of the utmoſt conſequence, that they ſhould be as little as poſſible under the influence of any paſſion whatſoever. And therefore, leſt they ſhould be biaſſed with the fear of being harraſſed by a vexatious ſuit, for acting according to their conſciences, the law will not leave any poſſibility for a proſecution of this kind. And as to the objection, that an attaint lies againſt a jury for a falſe verdict in a civil cauſe, and that there is as much reaſon to allow of it in a criminal one; it may be anſwered that in an attaint in a civil cauſe, a man's property is only brought into queſtion a ſecond time, and not his liberty or life. 1 *Haw.* 191. L. *Raym.* 469.

Attaint in a civil cauſe.

6. But where the jurors give a falſe verdict upon an iſſue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attaint in the king's bench or common pleas, upon which 24 of the beſt men of the county are to be jurors, who are to hear the ſame evidence which was given to the petty jury, and as much as can be brought in affirmance of the verdict, but no other againſt it. And if theſe 24 who are called the grand jury, find it a falſe verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party ſhall be infamous, ſo as never to be received to be a witneſs, or a juror; ſhall forfeit his goods and chattels; and his lands and tenements ſhall be taken into the king's hands; his wife and children caſt out of doors; his houſes proſtrated; his trees rooted up; his meadows plowed up; and his body impriſoned. And ſeeing all trials of real, perſonal, and mixt actions depend upon the oath of 12 men, prudent antiquity inflicted a ſtrange and ſevere puniſhment upon them, if they were attainted of perjury. 1 *Inſt.* 294. *Read.* Jur.

But now by the ſtatute of 23 *H.* 8. *c.* 3. The ſeverity of this puniſhment is moderated, if the writ of attaint be grounded upon that ſtatute; but nevertheleſs, the party grieved may at his election, either bring his writ of attaint upon that ſtatute, or at the common law. *Tr. p. pais.* 222.

But this proceeding ſeems to be entirely diſuſed at this day; and in the place of attaint, motions are now uſually made for new trials, when a verdict is againſt evidence. *Wood. b.* 4. *c.* 4. 3 *Blackſt.* 389.

But there can be no new trial for or againſt the king. *Tr. p. pais*, 210.

Whether they may be fined for their verdict.

7. It ſeems to be the current opinion of the old books, that jurors are not ſubject to any proſecution for a falſe verdict except by way of attaint: And there ſeem to be very

very few ancient precedents for the puniſhment either of a grand or petit jury, merely for giving a verdict againſt evidence, or the direction of the court, either in a capital or civil matter. 2 *Haw.* 147.

And the fining and impriſoning of jurors for giving their verdict, hath ſeveral times been declared in parliament an illegal and arbitrary innovation, and of dangerous conſequence to the government, and the lives and liberties of the ſubject. 2 *Keb.* 180. *Read.* Jur.

And in *Buſhel*'s caſe, it was reſolved by all the judges, upon a full conference together, that a jury is not finable for going againſt their evidence, where an attaint lies. And where an attaint doth not lie, L. *Vaughan* ſays thus: "That the court could not fine a juryman at the common law, where attaint did not lie, I think to be the "cleareſt poſition that ever I conſidered, either for authority or reaſon of law." And one reaſon for this is, becauſe the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evidence, than what is ſhewn in court; they are of the vicinage, the judge is a ſtranger; they may have evidence from their own perſonal knowledge that the witneſſes ſpeak falſe, which the judge knows not of; they may know the witneſſes to be ſtigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and ſo the judge knew as much as they, yet they might make different concluſions, as oftentimes two judges do; and therefore as it would be a ſtrange and abſurd thing, to puniſh one judge for differing with another in opinion or judgment, ſo it would be worſe for the jury, who are judges of the fact, to be puniſhed for finding againſt the direction of him who is not judge of the fact. *Tr. p. pais* 225. L. *Vaugh.* 135.

And to ſay the truth, ſays lord *Hale*, it would be the moſt unhappy caſe that could be to the judge, if he at his peril muſt take upon him the guilt or innocence of the priſoner: and if the judge's opinion muſt rule the matter of fact, the trial by jury would be uſeleſs. 2 *H. H.* 315.

But what if a jury give a verdict againſt all reaſon, convicting or acquitting a perſon indicted of felony, what ſhall be done? If the jury *convict* a man, againſt or without evidence, and againſt the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury *acquit* him in like manner, the court may ſend them back again (and ſo in the former caſe) to conſider better of it, before they record

the verdict; but if they are peremptory in it, and ſtand to their verdict, the court muſt take their verdict and record it. 2 *H. H.* 309, 310.

A. Warrant for the returning liſts of jurors.

Weſtmorland. { To *Henry Holme*, gentleman, high conſtable of the Weſt Ward, within the county aforeſaid.

AT *the general quarter ſeſſions of the peace of our ſovereign lord the king, holden at* ——— *in and for the ſaid county, the* ——— *day of* July, *in the* ——— *year of the reign of our ſaid ſovereign lord* George *the third, of* Great Britain, France, and Ireland, *king, defender of the faith, and ſo forth, before us* ——— *eſquires, and others our aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed:*

Theſe are to require you, upon ſight hereof, to iſſue forth your precepts to all the petty conſtables within your ſaid ward, thereby directing and requiring them, to make and return true liſts of jurors, according to the form or to the effect here following; that is to ſay,

Weſtmorland, Weſt ward. { To the conſtable of ———

BY *virtue of a warrant from his majeſty's juſtices of the peace in and for the ſaid county, at their general quarter ſeſſions aſſembled, unto me directed, you are hereby required to make a true liſt in writing, containing the names and places of abode, together with the titles and additions, of all perſons, between the ages of* 21 *and* 70, *dwelling within your conſtablewick, qualified to ſerve upon juries; that is to ſay, of every ſuch perſon who hath in his own name, or in truſt for him, within the county aforeſaid,* 10 *l a year above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demeſne, or in rents, or in all or any of them, in fee ſimple, fee tail or for the life of himſelf, or ſome other perſon; or having land in poſſeſſion in his own right of* 20 *l a year above the reſerved rent, being held by leaſe for* 500 *years or more, or for* 99 *years, or any other term determinable on one or more lives: in order to the making of which liſt, you may, if you think it needful, apply to any pariſh officer, who ſhall have in his cuſtody any of the rates for the poor or land tax, and from thence take the names of ſuch perſons ſo qualified. Which*

liſt

liſt ſo being made as aforeſaid, you are required, upon two or more ſundays, *at leaſt* 20 *days before* Michaelmas *next, to fix on the door of the church or chapel, and of every other publick place of religious worſhip within your pariſh or other precinct; and leave at the ſame time a duplicate thereof with a churchwarden or overſeer of the poor, to be peruſed by the pariſhioners* gratis. *And the ſaid liſt you are alſo further required to deliver in at the next general quarter ſeſſions of the peace, to be holden in and for the ſaid county, in open court; or otherwiſe, you may in the mean time apply to one of his majeſty's juſtices of the peace in and for the ſaid county, and in his preſence ſubſcribe the ſaid liſt, and atteſt the truth thereof upon oath; and the ſame (being firſt alſo ſigned by the ſaid juſtice) you may deliver to me, to be by me delivered in at the ſaid next general quarter ſeſſions. Given under my hand at* Barnſkew *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year*———. Henry Holme *High Conſtable.*

And this you the ſaid high conſtable are in no wiſe to omit, upon the peril that ſhall enſue thereof. Given under our hands and ſeals the day and year firſt above written.

B. The form of a writ to the ſheriff to ſummon jurors, for the trial of an iſſue joined; by the 4 & 5 *W. c.* 24. *ſ.* 15.

GEORGE *the third*, &c. *To the ſheriff of* ——— *greeting. We command you that you do not omit by reaſon of any liberty within your county, but that you enter therein, and cauſe to come before* ——— *twelve good and lawful men of the vicinage of* ——— *whereof every one hath ſuch lands, tenements, or rents, as will qualify them to ſerve upon juries, and who are neither of affinity to* ——— (the plaintiff) *nor to* ——— (the defendant); *to hear and do theſe things, which on our behalf ſhall be then and there enjoined them: And have you then there this precept. Witneſs* A. B. *and* C. D. *at* ——— *the* ——— *day of* ———.

Note; The general precept for ſummoning jurors to the ſeſſions, is contained in the precept for ſummoning the ſeſſions, in the title Seſſions.

C. Challenge to the array, becauſe the ſheriff is of kindred to one of the parties; from *Coke*'s entries.

AND *now at this day, to wit* ——— *came the aforeſaid* A. *the plaintiff, and* B. *the defendant, by their attornies,*

nies, and the jurors were impanelled, and demanded, and came, and thereupon the aforeſaid B. *challengeth the array of the panel aforeſaid, becauſe he ſaid that that panel was arrayed by one* John Zouch, *knight, now and at the time of making the array aforeſaid, ſheriff of the ſaid county of* Derby, *which ſaid ſheriff is a kinſman of the aforeſaid* John Maners (*the plaintiff*); *to wit, the ſon of* George Zouch, *eſquire, ſon of* John Zouch, *knight, ſon of* John Zouch, *eſquire, ſon of* William *lord* Zouch, *ſon of* Alan *lord* Zouch, *ſon of* William *lord* Zouch, *ſon of* Elizabeth *daughter of* William *lord* Roos, *father of* William *lord* Roos, *father of* Thomas *lord* Roos, *father of* Eleanor *mother of* George Maners, *knight, father of* Thomas *earl of* Rutland, *father of the aforeſaid* John Maners. *And this he is ready to verify, whereupon he prayeth judgment, and that the ſaid panel may be quaſhed. Which ſaid challenge by* ——— *and by* ——— *triers, to this choſen and ſworn, is found true. And therefore let the panel aforeſaid be quaſhed and amoved,* &c. Tr. p. pais 160.

Challenge becauſe the panel was returned at the inſtance of the party.

And upon this, the ſaid ——— *challenges the array of the ſaid panel, becauſe he ſays, that that panel was arrayed by one* J. S. *eſquire, late ſheriff of the county of* ——— *aforeſaid, at the nomination of the ſaid* ——— *and in his favour; which ſaid challenge, by triers thereof ſworn is found true.*

For other forms of challenges, and proceedings thereupon, ſee *Tr. per pais* 159—184.

Juſtifiable homicide. See Homicide.

MVSEVM BRITANNICVM

Here endeth the SECOND VOLUME.

